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MAINE RULES OF CRIMINAL PROCEDURE

I. SCOPE, PURPOSE, AND CONSTRUCTION

RULE 1. TITLE AND SCOPE OF RULES

(a) Title. These rules may be known and cited as the Maine Rules of Criminal Procedure.

(b) Scope. These rules govern the procedure in:

(1) *The Superior Court:*

(A) in all criminal proceedings, including appellate and post-conviction review proceedings and a proceeding on a post-conviction motion for DNA analysis; and

(B) in a juvenile crime appellate proceeding; and

(2) *The District Court:*

(A) in all criminal proceedings, including extradition proceedings and in a proceeding on a post-conviction motion for DNA analysis;

(B) in proceedings before justices of the peace and bail commissioners; and

(C) in juvenile crime proceedings to the extent consistent with the Maine Juvenile Code.

These rules are not applicable to forfeiture of property for a violation of a statute of the State of Maine or the collection of fines and penalties. These rules are not applicable to revocation proceedings under Title 17-A, sections 1205 through 1207, section 1233 or section 1349-D through 1349-F except to the extent and under the conditions stated in those sections.

(c) Procedure When None Specified. When no procedure is specifically prescribed the court shall proceed in any lawful manner not inconsistent with the

Constitution of the United States or of the State of Maine, these rules or any applicable statutes.

(d) Forms. Forms no longer accompany these rules. Forms are currently prepared by the Judicial Branch Forms Committee and, to a limited extent, by the Supreme Judicial Court. Forms are intended to be both sufficient under the rules and reflective of the simplicity and brevity of statement that the rules contemplate. Forms are available through the courts and, to an increasing extent, on the Internet.

(e) Effective Date of Amendments. Amendments to these rules will take effect on the day specified in the order adopting them. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when they take effect would not be feasible or would work injustice, in which event the former procedure applies.

RULE 2. PURPOSE AND CONSTRUCTION

These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.

II. PRELIMINARY PROCEEDINGS

RULE 3. THE COMPLAINT

(a) Nature and Contents. The complaint shall be a plain, concise, and definite written statement of the essential facts constituting the crime charged. The complaint is not required to negate any facts designated a "defense" or any exception, exclusion, or authorization set forth in the statute defining the crime. It need not contain a formal commencement, a formal conclusion or any other matter not necessary to such statement. Allegations made in one count may be incorporated by reference in another count. It may be alleged in a single count that the means by which the defendant committed the crime are unknown or that the defendant committed it by one or more specified means. The complaint shall state for each count the official or customary citation of the statute, rule, regulation, or other provision of law, the class of crime which the defendant is alleged therein to have violated and the municipality where the crime is alleged to have occurred. Error in the citation of a statute or its omission shall not be grounds for the

dismissal of the complaint or for reversal of a conviction if the error or omission was not prejudicially misleading.

All charges against a defendant arising from the same incident or course of conduct should be alleged in one complaint, except that special circumstances may require the use of separate instruments. A complaint may include multiple counts charged against a defendant when authorized pursuant to Rule 8(a). Nothing in this rule shall prohibit the later commencement of additional charges arising from the original incident or course of conduct. The court may administratively consolidate such subsequent charges with the original complaint into a single case docket. Two or more defendants may not be charged in the same complaint.

If a prior conviction must be specially alleged pursuant to 17-A M.R.S.A. § 9-A(1) it may not be alleged in an ancillary complaint or separate count but instead must be part of the allegations constituting the principal crime. A prior conviction allegation made in one count may be incorporated by reference in another count.

(b) How Made. The complaint shall be made upon oath before a Superior Court justice or a District Court judge or other officer empowered to issue warrants against persons charged with crimes against the state. If a charge is enhanced to a Class C crime or above because of prior convictions, the complaint shall allege the prior convictions to charge the enhanced crime.

"Oath" includes affirmations as provided by law.

(c) Surplusage. The court on motion of the defendant may strike surplusage from the complaint.

(d) Amendment of Complaint. The attorney for the state may amend a complaint as a matter of right at any time prior to completion of the defendant's initial appearance pursuant to Rule 5 or 5C of these rules.

The court may permit a complaint to be amended at any time before verdict or finding if no additional or different crime is charged and if substantial rights of the defendant are not prejudiced.

Unless the statutory class for the principal crime would be elevated thereby, amendment of a complaint for purposes of 17-A M.R.S.A. § 9-A(1) may be made

as of right by the attorney for the state at any time prior to the imposition of sentence on the principal crime.

(e) Arrest Tracking Number (ATN) and Charge Tracking Number (CTN). Unless the crime charged is an excepted crime under Rule 57, each count of the complaint should include the assigned Arrest Tracking Number and Charge Tracking Number.

(f) State Identification Number. If a State Identification Number has been assigned to a defendant by the State Bureau of Identification, and if that State Identification Number is known to the attorney for the state, the complaint shall contain that number.

RULE 4. WARRANT OR SUMMONS UPON INDICTMENT, INFORMATION OR COMPLAINT

(a) Grounds for Issuance of Warrant or Summons.

(1) *Indictment.* An indictment is grounds for issuance of a warrant or summons for the defendant named in the indictment.

(2) *Probable Cause.* Probable cause to believe that a crime has been committed and that the defendant committed it is grounds for a warrant or summons for the defendant. Probable cause shall appear from the information or complaint or from an affidavit or affidavits sworn to before a Superior Court justice, a District Court judge or other officer empowered to issue process against persons charged with crimes against the state and filed with the information or complaint.

(3) *Bench Warrant.* A bench warrant may issue for a failure to appear or for contempt or as provided by statute.

(b) Who May Issue Warrant or Summons.

(1) *Indictment.* A clerk shall issue a warrant or summons for the defendant named in the indictment when so directed by the court or so requested by the attorney for the state.

(2) *Probable Cause.* A Superior Court Justice, a District Court Judge or, when duly authorized to do so, a justice of the peace or clerk may issue a warrant or summons based on probable cause, as determined pursuant to subdivision (a)(2).

(3) *Bench Warrant.* A Justice or Judge may sign a bench warrant. A clerk shall sign a bench warrant when so directed by the court, except in cases of contempt.

(4) *Definition.* For purposes of this rule, "clerk" means a clerk or deputy clerk of the District Court and a clerk or deputy clerk of the Superior Court.

(c) Form.

(1) *Warrant.* The warrant shall bear the caption of the court or division of the court from which it issues. It shall be signed by a justice or judge or other person authorized to issue warrants and shall contain the name of the defendant or, if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty. The warrant shall contain available information concerning the identity and location of the defendant, including, but not limited to, photographs of the defendant, the defendant's last known address identified by town, county and geographic codes, the defendant's date of birth and any distinguishing physical characteristics that will aid in the location of the defendant and the execution of the warrant. It shall describe the crime charged and shall command that the defendant be arrested and brought before the court. The amount of bail may be fixed by the court and endorsed on the warrant.

(2) *Summons.* The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before the court at a stated time and place.

(d) Possession of Warrant. There shall be an original and an attested copy of the warrant. The original shall remain in the issuing court. The attested copy shall remain in the possession of the arrest warrant repository or the investigation agency, as provided by 15 M.R.S. ch. 99 and the standards issued pursuant to that chapter.

When a warrant is signed by a judicial officer outside of the regular business hours of a court, the original warrant must be filed on the next regular business

day. The filing must be made in person, or by mail, with the court that would have jurisdiction and venue over a criminal action resulting from the warrant.

(e) Execution or Service.

(1) *By Whom.* The warrant shall be executed by any officer authorized by law. The summons may be served by any constable, police officer, sheriff, deputy sheriff, marine patrol officer of the Department of Marine Resources, warden of the Department of Inland Fisheries and Wildlife, or any person authorized to serve a summons in a civil action.

(2) *Territorial Limits.* The warrant may be executed or the summons may be served at any place within the State of Maine.

(3) *Manner of Execution of Warrant.* The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in the officer's possession at the time of the arrest, but upon request the officer shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant in his or her possession at the time of the arrest, he or she shall then inform the defendant of the crime charged and of the fact that a warrant has been issued. The officer executing the warrant shall bring the arrested person promptly before the court or, for the purpose of admission to bail, before a bail commissioner.

(4) *Service of Summons.* The clerk shall mail a summons to the defendant's last known address or shall deliver it to any officer authorized by law to execute or serve it or to the attorney for the state, unless the defendant is in custody or otherwise before the court. More than one summons may issue for a defendant. Personal service is effected by delivering a copy to the defendant personally or by leaving it at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. A summons to a corporation shall be served in the same manner as a summons to a corporation is served in a civil case.

(5) *Failure of Service or Failure to Appear in Response to Summons*. If a mailed summons is returned undelivered or if a defendant cannot be personally served or if a defendant fails to appear in response to a summons, the clerk shall request the court to authorize a warrant.

(f) Return.

(1) *Warrant*. The officer executing a warrant shall make a return of the warrant as provided by 15 M.R.S. ch. 99 and the standards issued pursuant to that chapter.

(2) *Summons*. On or before the return day the person to whom a summons was delivered for service shall make return thereof. At the request of the attorney for the state made at any time while the charge is pending, a summons returned unserved or a duplicate thereof may be delivered by the clerk to any authorized person for service.

RULE 4A. PROBABLE CAUSE DETERMINATION UPON WARRANTLESS ARREST FOR ANY CRIME

(a) Timing: Required Findings. Except in a bona fide emergency or other extraordinary circumstance, when a person arrested without a warrant for any crime is not released from custody within 48 hours after arrest, including Saturdays, Sundays and legal holidays, a Superior Court justice, District Court judge or justice of the peace shall determine, within that time period, whether there is probable cause to believe that a crime has been committed and that the arrested person has committed it. If the evidence does not establish such probable cause, the Superior Court justice, District Court judge, or justice of the peace shall discharge the arrested person. If a probable cause determination has not taken place within 36 hours after the arrest, including Saturdays, Sundays and legal holidays, the custodian shall notify the attorney for the state of the upcoming deadline. For purposes of this Rule "custody" means incarceration. Rule 45(a) and (b) have no application to this subdivision.

(b) Evidence. In making this determination the Superior Court justice, District Court judge or justice of the peace shall consider:

(1) the sworn complaint;

(2) an affidavit or affidavits, if any, filed by the state;

(3) a sworn oral statement or statements, if any, made before the Superior Court justice, District Court judge, or justice of the peace which is reduced to writing or electronically recorded by equipment that is capable of providing a record adequate for purposes of review. A Superior Court justice, District Court judge, or justice of the peace may administer the oath and receive an oral statement by telephone.

(c) Record. A finding that probable cause does or does not exist shall be endorsed on the complaint or other appropriate document and filed together with the sworn complaint, affidavit(s) or other written or recorded record with the clerk of the court having jurisdiction of the crime for which the arrested person is charged.

RULE 5. INITIAL PROCEEDINGS IN THE DISTRICT COURT FOR PERSONS ARRESTED OR SUMMONSED FOR CLASS D OR FOR CLASS E CRIMES

(a) Initial Appearance Before the District Court Judge. A person arrested for a Class D or Class E crime, either under a warrant issued upon a complaint filed in the District Court or without a warrant, who is not sooner released, shall be brought before a District Court judge without unnecessary delay and in no event later than 48 hours after the arrest, excluding Saturdays, Sundays, legal holidays, and court holidays. Such appearance may be by audiovisual device in the discretion of the court. If such appearance has not taken place within 36 hours after the arrest, the custodian shall notify the attorney for the state of the upcoming deadline. If such appearance has not taken place within 48 hours after the arrest, excluding Saturdays, Sundays, legal holidays, and court holidays, the custodian shall release the person from custody or bring the person forthwith before the District Court for such appearance.

(1) *Persons Arrested Under a Warrant*. Persons arrested under a warrant issued upon a complaint filed in the District Court shall be taken before the District Court designated in the warrant or the nearest available District Court. If the arrest is made at a place 100 miles or more from the court designated in the warrant, the person arrested, if bail has not previously been set or denied by the court, shall be taken before the nearest available District Court judge or bail commissioner, who shall admit the person to bail for appearance before the District Court within which the complaint has been filed.

(2) *Persons Arrested Without a Warrant*. Persons arrested without a warrant for Class D or Class E crimes only shall be taken before the nearest available District Court judge. The complaint shall be filed with the District Court judge forthwith. A determination of probable cause shall be made in accordance with Rule 4A.

(b) Initial Statement by the District Court Judge. When a person arrested, either under a warrant issued upon a complaint filed in the District Court or without a warrant, is brought before a District Court judge, or a person who has been summonsed appears before a District Court judge in response to a summons, the District Court judge, in open court, shall, unless waived by the person or the person's counsel:

(1) inform the person of the substance of the charges against the person;

(2) inform the person of the person's right to retain counsel, and to request the assignment of counsel, and that the person may be allowed a reasonable time and opportunity to consult counsel before entering a plea;

(3) inform the person that the person is not required to make a statement and that any statement made by the person may be used against the person; and

(4) admit the person to bail as provided by law.

(c) Further Statement by the District Court Judge Before Calling Upon the Person to Plead. In addition to the statements in subsection (b) of this Rule, before calling upon the person to plead, the District Court judge shall inform the person of:

(1) the maximum penalties and any applicable mandatory minimum penalties;

(2) the person's right to trial by jury and of the necessity of a demand for jury trial in accordance with these Rules; and

(3) the duty placed on the person by 14 M.R.S.A. § 3141(3) of immediate payment in full of any fine imposed by the court if convicted of the charges against that person.

A person charged with a Class D or Class E crime shall be called upon to plead unless that person has requested a reasonable time and opportunity to consult with counsel.

(d) Assignment of Counsel. When a person, who is charged with a Class D or Class E crime, is entitled to court-appointed counsel, the District Court judge shall appoint counsel to represent the person not later than the time of the initial

appearance, unless the person elects to proceed without counsel. Counsel may be appointed for the limited purpose of representing the person at initial appearance or arraignment.

RULE 5A. BIND-OVER HEARING

[Abrogated July 1, 2006]

RULE 5B. TRANSFER FROM DISTRICT COURT TO SUPERIOR COURT IF A CLASS C OR HIGHER CRIME IS ADDED BY ATTORNEY FOR THE STATE

In any proceeding initiated in the District Court pursuant to Rule 5, the accused shall appear before the District Court as directed. In the event that the attorney for the state elects to charge by amendment of the original complaint pursuant to Rule 8(a), or by filing a new complaint, a related charge of murder or a related charge involving at least one Class A, Class B or Class C crime, the District Court, upon appearance of the accused, shall make a determination of probable cause if required by Rule 4A, advise the accused of the original and the added charges, assure that the accused, or counsel, has a copy of the added charges and provide the same initial statement and further statement required of a Superior Court justice pursuant to Rule 5C(b) and (c). Following the appearance, unless a plea of guilty is contemplated pursuant to Rule 11(f) and 17-A M.R.S.A. § 9(3), the District Court shall promptly transmit to the appropriate Superior Court the District Court's entire original file in the case, any bail that has been taken and a copy of all the docket entries. Bail shall continue until further order of the Superior Court. Pretrial motions will be heard and decided in Superior Court.

RULE 5C. INITIAL PROCEEDINGS IN THE SUPERIOR COURT

(a) Initial Appearance Before the Superior Court Justice. A person arrested for at least one Class C or higher crime (accompanied or unaccompanied by related Class D or Class E crimes) under a warrant issued upon an indictment or upon an information or complaint filed in the Superior Court or without a warrant, who is not sooner released, shall be brought before a Superior Court justice without unnecessary delay and in no event later than 48 hours after the arrest, excluding Saturdays, Sundays, legal holidays, and court holidays. Such appearance may be by audiovisual device in the discretion of the court. If such appearance has not taken place within 36 hours after the arrest, the custodian shall

notify the attorney for the state of the upcoming deadline. If such appearance has not taken place within 48 hours after the arrest, excluding Saturdays, Sundays, legal holidays, and court holidays, the custodian shall release the person from custody or bring the person forthwith before the Superior Court for such appearance.

(1) *Persons Arrested Under a Warrant*. Persons arrested under a warrant issued upon an indictment, an information, or a complaint filed in the Superior Court shall be taken before the Superior Court designated in the warrant or the nearest available Superior Court. If the arrest is made at a place 100 miles or more from the court designated in the warrant, the person arrested, if bail has not been previously set or denied by the court, shall be taken before the nearest available Superior Court justice or bail commissioner, who shall admit the person to bail for appearance before the Superior Court within which the indictment, information, or complaint has been filed. A determination of probable cause pursuant to Rule 4A shall not be made.

(2) *Persons Arrested Without a Warrant*. Persons arrested without a warrant shall be taken before the nearest available Superior Court justice. The complaint or information shall be filed with the Superior Court justice forthwith. A determination of probable cause shall be made in accordance with Rule 4A unless an indictment has been returned.

(b) Initial Statement by the Superior Court Justice. When a person arrested, either under a warrant issued upon an indictment, an information, or upon a complaint filed in the Superior Court or without a warrant is brought before a Superior Court justice or a person who has been summonsed appears before a Superior Court justice in response to a summons, the Superior Court justice, in open court, shall, unless waived by the person or the person's counsel:

(1) inform the person of the substance of the charges against the person;

(2) inform the person of the person's right to retain counsel, and to request the assignment of counsel, and that the person may be allowed a reasonable time and opportunity to consult counsel before entering a plea;

(3) inform the person that the person is not required to make a statement and that any statement made by the person may be used against the person;

(4) admit the person to bail as provided by law; and

(5) inform the person of the duty placed upon the person by 14 M.R.S.A. § 3141(3) of immediate payment in full of any fine that ultimately may be imposed by the court if convicted of the charges against the person.

(c) Further Statement by the Superior Justice With Respect to Class C or Higher Crimes in the Absence of an Indictment or Information. A person charged by complaint with any Class C or higher crime shall not be called upon to plead to that Class C or higher crime, and the person shall be advised of the right to apply for a waiver of indictment and to enter any plea upon a complaint or an information after a waiver is accepted. No person charged with murder shall be allowed to plead guilty or nolo contendere prior to indictment.

(d) Further Statement and Arraignment with Respect to Class D or E Crimes. In addition to the statements in subsection (b) of this rule, when a person is charged with a Class D or Class E crime and no related Class C or higher crime, before calling upon the person to plead, the Superior Court justice shall inform the person of:

(1) the maximum penalties and any applicable mandatory minimum penalties; and

(2) the person's right to trial by jury and of the necessity of a demand for jury trial in accordance with these rules. Unless a demand for trial by jury is filed not later than 21 days after arraignment, the defendant shall be deemed to have waived the right to trial by jury.

A person charged with a Class D or Class E crime and no related Class C or higher crime, shall be called upon to plead unless that person has requested a reasonable time and opportunity to consult with counsel.

(e) Assignment of Counsel. When a person is entitled to court-appointed counsel, the Superior Court justice shall appoint counsel to represent the person for initial appearance, unless the person elects to proceed without counsel. Counsel may be appointed for the limited purpose of representing the person at the initial appearance or arraignment.

Subject to the limitation in subsection (c) of this Rule, a person who has been allowed a reasonable time and opportunity to consult with counsel shall be called upon to plead.

(f) Retention of Jurisdiction. When a person is arrested or summonsed for a Class C or higher crime and a first appearance is scheduled before the Superior Court, the Superior Court shall retain jurisdiction over the Class C or higher charge and all related Class D and Class E charges even if the attorney for the state, at any time, elects to amend or dismiss the Class C or higher charge so that no Class C or higher charge remains pending.

III. INDICTMENT AND INFORMATION

RULE 6. THE GRAND JURY

(a) Number of Grand Jurors. The grand jury shall consist of not less than 13 nor more than 23 jurors and a sufficient number of legally qualified persons shall be summoned to meet this requirement.

(b) Objections to Grand Jury and to Grand Jurors.

(1) *Challenges.* Either the attorney for the state or a defendant who has been held to answer may challenge an individual grand juror on the ground that the juror is not legally qualified or that a state of mind exists on the juror's part which may prevent the juror from acting impartially. All challenges must be in writing and allege the ground upon which the challenge is made, and such challenges must be made prior to the time the grand jurors commence receiving evidence at each session of the grand jury. If a challenge to an individual grand juror is sustained, the juror shall be discharged and the court may replace the juror from persons drawn or selected for grand jury service.

(2) *Motion to Dismiss.* A motion to dismiss the indictment may be based on objections to the array or, if not previously determined upon challenge, on the lack of legal qualifications of an individual juror or on the ground that a state of mind existed on the juror's part which prevented the juror from acting impartially, but an indictment shall not be dismissed on the ground that one or more members of the grand jury were not legally qualified if it appears from the record kept pursuant to subdivision (c) of this rule that 12 or more jurors, after deducting the number not legally qualified, concurred in finding the indictment.

(c) Foreperson and Deputy Foreperson. The court shall appoint one of the jurors to be foreperson and another to be deputy foreperson. The foreperson shall have power to administer oaths and affirmations and shall sign all indictments. The foreperson or another juror designated by the foreperson shall keep a record of the number of jurors concurring in the finding of every indictment and shall file the record with the clerk of court, but the record shall not be public except on order of the court. During the absence of the foreperson the deputy foreperson shall act as foreperson.

(d) Presence During Proceedings. While the grand jury is taking evidence, only the attorneys for the state, the witness under examination, and, when ordered by the court, an interpreter, translator, court reporter, or operator of electronic recording equipment may be present. While the grand jury is deliberating or voting, only the jurors may be present.

(e) General Rule of Secrecy. A juror, attorney, interpreter, translator, court reporter, operator of electronic equipment, or any person to whom disclosure is made under this rule may not disclose matters occurring before the grand jury, except as otherwise provided in these rules or when so directed by the court. No obligation of secrecy may be imposed upon any person except in accordance with this rule. In the event an indictment is not returned, any stenographic notes and electronic backup, if any, of an official court reporter or tape or digital record of an electronic sound recording and any written record of information necessary for an accurate transcription prepared by the operator and any transcriptions of such notes, tape or digital record shall be impounded by the court. The court may direct that an indictment be kept secret until the defendant is in custody or has given bail, and in that event the court shall seal the indictment and no person may disclose the finding of the indictment except when necessary for the issuance or execution of a warrant or summons. Disclosure otherwise prohibited by this rule of matters occurring before the grand jury, other than its deliberations and any vote of any juror, may be made to:

(1) an attorney for the state in the performance of the duty of an attorney for the state to enforce the state's criminal laws;

(2) such staff members of an attorney for the state as are assigned to the attorney for the state and are reasonably necessary to assist an attorney for the state in the performance of the duty of an attorney for the state to enforce the state's criminal laws; and

(3) another state grand jury by an attorney for the state in the performance of the duty of an attorney for the state to enforce the state's criminal laws.

Any person to whom matters are disclosed under paragraphs (1) or (2) of subdivision (e) of this rule may not utilize that grand jury material for any purpose other than assisting the attorney for the state in the performance of such attorney's duty to enforce the state's criminal laws.

(f) Recording of Proceedings. Upon motion of the defendant or the attorney for the state, the court, in its discretion for good cause shown, may order that a court reporter or operator of electronic recording equipment be present for the purpose of taking evidence. No person other than a court reporter or operator of electronic recording equipment shall be permitted to record any portion of the proceeding.

(g) Procedure for Preparation and Disclosure of Transcript. No transcript may be prepared of the record of the evidence presented to the grand jury without an order of the court. Upon motion of the defendant or the attorney for the state and upon a showing of particularized need, the court may order a transcript of the record of the evidence to be furnished to the defendant or the attorney for the state upon such terms and conditions as are just.

(1) Transcripts of the record of the evidence may also be furnished upon such terms and conditions as are just:

(A) when ordered by the court preliminarily to or in connection with a judicial proceeding and upon a showing of particularized need; or

(B) when ordered by the court at the request of an attorney for the state to an appropriate official of another jurisdiction for the purpose of enforcing the criminal laws of another jurisdiction upon a showing that such disclosure may constitute evidence of a violation of the criminal laws of that other jurisdiction.

(2) A petition for disclosure pursuant to paragraph (1) of subdivision (g) shall be filed in the Superior Court where the grand jury convened. Unless the hearing is ex parte, which it may be when the petitioner is the state, the petitioner shall serve written notice of the petition upon:

(A) the attorneys for the state who were present before the grand jury, or their designee;

(B) the parties to the judicial proceeding if disclosure is sought in connection with such a proceeding; and

(C) such other persons as the court may direct. The court shall afford those persons a reasonable opportunity to appear and be heard prior to disclosure of the transcript of the record of the evidence. The court shall order such a hearing to be closed to the extent necessary to prevent disclosure of matters occurring before the grand jury.

(3) If the judicial proceeding giving rise to the petition is before a court of another county, the Superior Court which convened the grand jury may transfer the disclosure hearing to the Superior Court of the county of the petitioning court, unless the court convening the grand jury may reasonably obtain sufficient knowledge of the proceeding to determine whether disclosure is proper. The Superior Court convening the grand jury may order transmitted to the Superior Court to which the matter is transferred the material sought to be disclosed, if feasible, and a written evaluation of the need for continued grand jury secrecy.

(h) Disclosure for Certain Law Enforcement Purposes. Disclosure otherwise prohibited by this rule of matters occurring before the grand jury, other than its deliberations and any vote of any grand juror, may be made to such law enforcement personnel (including personnel of the United States, another state or territory or subdivision of such) as are deemed necessary by an attorney for the state to assist in the performance of the duty of an attorney for the state to enforce the state's criminal laws. Any person to whom matters are disclosed under this subdivision may not utilize that grand jury material for any purpose other than assisting an attorney for the state in the performance of such attorney's duty to enforce the state's criminal laws. An attorney for the state shall promptly provide the Superior Court, which convened the grand jury whose material has been disclosed under this subdivision, with the names of the persons and agencies to whom such disclosure has been made, and shall certify that the attorney for the state has advised such persons of their obligation of secrecy under this rule.

(i) Finding and Return of Indictment. An indictment may be found only upon the concurrence of 12 or more jurors. The indictment shall be returned to the court by the grand jury or its foreperson or its deputy foreperson in open court. If the defendant is in custody or has given bail and 12 jurors do not concur in finding an indictment, the foreperson shall so report to the court in writing forthwith.

(j) Excuse. At any time for cause shown, the court may excuse a juror either temporarily or permanently, and in the latter event the court may impanel another person in place of the juror excused. No juror may participate in voting with respect to an indictment unless the juror shall have been in attendance at the presentation of all the evidence produced in favor of and adverse to the return of the indictment.

RULE 7. THE INDICTMENT AND THE INFORMATION

(a) Use of Indictment, Information or Complaint. All proceedings in which the crime charged is murder shall be prosecuted by indictment. All proceedings in which the crime charged is a Class A, Class B, or Class C crime shall be prosecuted by indictment, unless indictment is waived, in which case prosecution may be by information or complaint in accordance with this Rule.

In the event that a Class D or Class E charge may be joined with a related charge of murder or a related charge involving at least one Class A, Class B, or Class C crime under Rule 8(a), that Class D or Class E charge should be prosecuted in the same indictment charging murder or the same indictment, information or complaint charging the Class A, Class B, or Class C crime.

Any indictment, information or complaint so filed, if the indictment, information or complaint supplements or replaces another charging instrument, must indicate the docket number previously assigned to the earlier charging instrument.

(b) Waiver of Indictment. Any crime except murder may be prosecuted by information or complaint upon request of the defendant, if the defendant, after being advised by the court of the nature of the charge and of the defendant's rights, shall in writing signed by the defendant waive prosecution by indictment; such waiver with the approval of the court endorsed thereon shall be annexed to the information or complaint.

(c) Nature and Contents. An indictment shall be signed by the foreperson of the grand jury, and an information shall be signed by the attorney for the state and certified on information and belief. The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the crime charged. The indictment or information is not required to negate any facts designed a "defense" or any exception, exclusion, or authorization

set forth in the statute defining the crime. It need not contain a formal commencement, a formal conclusion, or any other matter not necessary to such statement. Allegations made in one count may be incorporated by reference in another count. It may be alleged in a single count that the means by which the defendant committed the crime are unknown or that the defendant committed it by one or more specified means. The indictment or information shall state for each count the official or customary citation of the statute, rule, regulation, or other provision of law, and the class of crime which the defendant is alleged therein to have violated. Error in the citation of a statute or its omission shall not be grounds for the dismissal of the indictment or information or for reversal of a conviction if the error or omission did not mislead the defendant to the defendant's prejudice.

All charges against a defendant arising from the same incident or course of conduct should be alleged in one indictment or information. An indictment or information may include multiple counts charged against a defendant when authorized pursuant to Rule 8(a). Nothing in this rule shall prohibit the later commencement of additional charges arising from the original incident or course of conduct. The court may administratively consolidate such subsequent charges with the original indictment or information into a single case docket. Two or more defendants may not be charged in the same indictment or information.

If a prior conviction must be specially alleged pursuant to 17-A M.R.S.A. § 9-A(1) it may not be alleged in an ancillary indictment, information or separate count thereof but instead must be part of the allegations constituting the principal crime. A prior conviction allegation made in one count may be incorporated by reference in another count.

(d) Surplusage. The court on motion of the defendant may strike surplusage from the indictment or information.

(e) Amendment of Indictment or Information. The court may permit the amendment of an indictment charging a crime other than a Class D or Class E crime at any time before verdict or finding if the amendment does not change the substance of the crime.

The court may permit the amendment of an indictment charging a Class D or Class E crime, or an information at any time before verdict or finding if no additional or different crime is charged and if no substantial right of the defendant is prejudiced.

Unless the statutory class for the principal crime would be elevated thereby, amendment of an indictment or information for purposes of 17-A M.R.S.A. § 9-A(1) may be made as of right by the attorney for the state at any time prior to the imposition of sentence on the principal crime and sentencing shall be continued until the attorney for the state has been afforded the opportunity to obtain an amended indictment if the allegation must be made by the grand jury.

(f) Arrest Tracking Number (ATN) and Charge Tracking Number (CTN). Unless the crime charged is an excepted crime under Rule 57, each count of the indictment or information should include the assigned Arrest Tracking Number and Charge Tracking Number.

(g) State Identification Number. If a State Identification Number has been assigned to a defendant by the State Bureau of Identification, and if that State Identification Number is known to the attorney for the state, the indictment or information shall contain the State Identification Number.

RULE 8. JOINDER OF CRIMES AND OF DEFENDANTS

(a) Joinder of Crimes. Two or more crimes should be charged in the same indictment, information or complaint in a separate count for each crime if the crimes charged, whether of the same class or different classes, are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions which are connected or which constitute parts of a common scheme or plan.

(b) Joinder of Defendants. The attorney for the state who initiates a prosecution against two or more defendants may file a Notice of Joinder with respect to defendants who are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting a crime or crimes. A Notice of Joinder must be filed with each case to be joined. Upon the filing of such notices, the cases so designated in the notices are joined. The defense may move pursuant to paragraph (d) of this rule for relief from the Notice of Joinder. The Notice of Joinder should be filed at the same time as the charging instrument but in any event must be filed no later than 10 days after the charging instrument is filed.

(c) Trial Together of Indictments, Informations or Complaints. The court may order two or more indictments, informations, or complaints to be tried together against a single defendant if the crimes should have been joined under

paragraph (a). The court may order two or more indictments, informations, or complaints to be tried together against two or more defendants if the defendants could have been joined under paragraph (b).

(d) Relief From Prejudicial Joinder. If it appears that a defendant or the state is prejudiced by a joinder of offenses against a single defendant or by the joinder of defendants, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires, including ordering multiple simultaneous trials.

RULE 9. WARRANT OR SUMMONS UPON INDICTMENT OR INFORMATION [ABROGATED]

IV. ARRAIGNMENT AND PREPARATION FOR TRIAL

RULE 10. ARRAIGNMENT

Unless otherwise provided by law, arraignment shall be conducted in open court and shall consist of reading the indictment, information or complaint to the defendant or stating to the defendant the substance of the charge and calling on the defendant to plead thereto. The clerk shall cause a copy of the indictment or information to be furnished to the defendant or the defendant's counsel before the defendant is called upon to plead and notation thereof shall be made in the docket. The clerk shall cause a copy of the complaint, other than a uniform summons and complaint, to be furnished to the defendant or defendant's counsel before the defendant is called upon to plead, if requested by the defendant or the defendant's counsel. When the crime charged is a Class D or Class E crime, a represented defendant may enter a plea in writing without the necessity of an arraignment in open court unless the court requires the defendant to appear personally.

When the administration of justice would be served thereby, the court may order that an arraignment occur in a county other than the county in which the prosecution is pending.

RULE 11. PLEAS; ACCEPTANCE OF A PLEA TO A CHARGE OF A CLASS C OR HIGHER CRIME; NOTICE AS TO POSSIBLE IMMIGRATION CONSEQUENCES

(a) Pleas.

(1) *In General.* A defendant may plead not guilty, not criminally responsible by reason of insanity, guilty, or nolo contendere. A defendant may plead both not guilty and not criminally responsible by reason of insanity to the same charge.

The court may refuse to accept a plea of guilty or nolo contendere.

If a defendant refuses to plead, or if the court refuses to accept a plea of guilty or nolo contendere, the court shall enter a plea of not guilty.

(2) *Conditional Plea.* With the approval of the court and the consent of the attorney for the state, a defendant may enter a conditional plea of guilty or nolo contendere. A conditional plea shall be in writing. It shall specifically state any pretrial motion and the ruling thereon to be preserved for appellate review. If the court approves and the attorney for the state consents to entry of the conditional plea of guilty or nolo contendere, the parties shall file a written certification that the record is adequate for appellate review and that the case is not appropriate for application of the harmless error doctrine. Appellate review of any specified ruling shall not be barred by the entry of the conditional plea.

If the defendant prevails on appeal, the defendant shall be allowed to withdraw the plea.

(3) *Fine on Acceptance of Guilty Plea in District Court.* The District Court clerk may, at the signed request of the defendant, accept a guilty plea upon payment of a fine as set by the judge in the particular case or as set by the judge in accordance with a schedule of fines established by the judge with the approval of the Chief Judge for various categories of such crimes.

(b) Prerequisites to Accepting a Plea of Guilty or Nolo Contendere to a Class C or Higher Crime. In all proceedings in which the crime charged is murder or a Class A, Class B, or Class C crime, before accepting a plea of guilty or nolo contendere, the court shall insure:

(1) That the plea is made with knowledge of the matters set forth in subdivision (c); and

(2) That the plea is voluntary within the meaning of subdivision (d); and

(3) That there is a factual basis for the charge, as provided in subdivision (e); and

(4) That an unrepresented defendant has waived the defendant's right to counsel.

(c) Insuring That the Plea Is Made Knowingly. Before accepting a plea of guilty or nolo contendere, the court shall address the defendant personally in open court and inform the defendant of, and determine that the defendant understands, the following:

(1) The elements of the crime charged, the maximum possible sentence and any mandatory minimum sentence; and

(2) That by pleading guilty or nolo contendere the defendant is relinquishing the right to a trial, at which the defendant would have the following rights:

(A) The right to be considered innocent until proven guilty by the state beyond a reasonable doubt; and

(B) The right to a speedy and public trial by the court or by a jury; and

(C) The right to confront and cross-examine witnesses against the defendant; and

(D) The right to present witnesses on the defendant's behalf and the right to either be or decline to be a witness on the defendant's behalf.

(d) Insuring That the Plea Is Voluntary. Before accepting a plea of guilty or nolo contendere, the court shall determine that the plea is the product of the defendant's free choice and not the result of force, threats or promises other than those in connection with a plea agreement.

The court shall make this determination by addressing the defendant personally in open court.

The court shall inquire as to the existence and terms of a plea agreement, as provided in Rule 11A.

(e) Insuring That There Is a Factual Basis for the Plea. Before accepting a plea of guilty or nolo contendere, the court shall make such inquiry of the attorney for the state as shall satisfy it that the state has a factual basis for the charge.

(f) Acceptance of a Plea of Guilty to a Class C or Higher Crime in District Court. A defendant who, prior to indictment, desires to enter a plea of guilty in the District Court to a charge of a Class A, B, or C crime may in writing waive the defendant's right to appearance and trial in the Superior Court and may waive indictment as provided in Rule 7(b).

If the court refuses to accept the plea or the defendant, after executing the waivers, declines to plead guilty or if a plea of guilty is set aside, the waivers shall be considered withdrawn and the case shall proceed in accordance with these rules as if no waivers had been filed.

All proceedings in the District Court shall be reported in such manner that an accurate transcript of the proceedings can be made. Such reporting may be done by means of electronic recording equipment.

(g) Transfer for Plea and Sentence. The defendant may, in writing, if a criminal charge is currently pending in a court, request permission to plead guilty or nolo contendere to any other crime the defendant has committed in the state, subject to the written approval of the attorneys for the state, if more than one. Upon receipt of the defendant's written statement and of the written approval of the attorneys for the state the clerk of the court in which a complaint, an indictment or an information is pending shall transmit the papers in the proceeding to the clerk of courts for the court in which the defendant is held, and the prosecution shall continue in that court. The defendant's plea of guilty or nolo contendere constitutes a waiver of venue.

The court receiving a case transferred for plea and sentence shall issue an order that either requires the case to remain in the sentencing court or requires the case to be returned to the originating court.

(h) Immigration Consequences of the Plea. Before accepting a plea of guilty or nolo contendere for any crime, the court shall inquire whether the defendant is a United States citizen. If the defendant is not a United States citizen, the court shall ascertain from defense counsel whether the defendant has been notified that there may be immigration consequences of the plea. If no such

notification has been made, or if the defendant is unrepresented, the court shall notify the defendant that there may be immigration consequences of the plea and may continue the proceeding for investigation and consideration of the consequences by the defendant. The court is not required or expected to inform the defendant of the nature of any immigration consequences.

RULE 11A. PLEA AGREEMENTS

(a) In General. The attorney for the state and the attorney for the defendant or the defendant when acting pro se may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo contendere to a charged crime or to a lesser or related crime, any or all of the following will occur:

(1) The attorney for the state will dismiss other charges;

(2) The attorney for the state will not oppose the defendant's requested disposition;

(3) The attorney for the state will recommend a particular disposition; or

(4) Both sides will recommend a particular disposition.

The court may participate in the negotiation of the specific terms of the plea agreement at the request of or with the agreement of the parties.

(b) Notice of Plea Agreement. If a plea agreement has been reached by the parties, the Superior Court shall, on the record, require the disclosure of the agreement in open court at the time the plea is offered. If a plea agreement has been reached by the parties in the case of a plea of guilty to a Class C or higher crime in the District Court, the District Court shall, on the record, require the disclosure of the agreement in open court at the time the plea is offered.

(c) Statement of Reasons in the Case of a Class C or Higher Crime. If the plea agreement in the case of a Class C or higher crime includes a recommendation of the type specified in subdivision (a)(3) or (a)(4), the attorney for the state shall set forth on the record the reasons for the recommendation. In addition, in the case of a recommendation of the type specified in subdivision (a)(4), the attorney for the defendant shall set forth on the record the reasons for the recommendation.

Nothing herein shall relieve the parties of the obligation to present relevant facts to the court.

(d) Acceptance or Rejection by the Court of Recommendation Included in Plea Agreement. If the court accepts the recommendation, it may embody in the judgment and sentence a disposition more favorable to the defendant than that recommended, but it may not embody in the judgment and sentence any disposition less favorable to the defendant than that recommended.

The court shall not reject the recommendation without giving the defendant the opportunity to withdraw his plea, as provided in subdivision (e).

The court may defer imposition of sentence pending an opportunity to consider the presentence report.

(e) Withdrawal of Plea Upon Rejection of Recommendation. If the plea agreement includes a recommendation of the type specified in subdivision (a)(3) or (a)(4), and if the court at the time of sentencing intends to enter a disposition less favorable to the defendant than that recommended, the court shall on the record inform the parties of this intention, advise the defendant personally in open court that the court is not bound by the recommendation, advise the defendant that, if the defendant does not withdraw the defendant's plea of guilty or nolo contendere the disposition of the case will be less favorable to the defendant than that recommended, and afford the defendant the opportunity to withdraw the defendant's plea. The court will, if possible, inform the defendant of the intended disposition.

(f) Compliance With Plea Agreement. If the plea agreement is of the type specified in subdivision (a)(1) or (a)(2) of this rule and if the attorney for the state fails to comply with the plea agreement, the court shall afford the defendant the opportunity to withdraw the defendant's plea or grant such other relief, including enforcing the plea agreement, as the court deems appropriate.

(g) Inadmissibility of Pleas, Offers of Pleas and Related Statements. The admissibility of evidence of a withdrawn plea of guilty or nolo contendere, or of offers or statements pertaining thereto, is governed by Rule 410 of the Maine Rules of Evidence. A plea of nolo contendere is not admissible in any civil or criminal proceedings against the person who made the plea.

(h) Acceptance of a Negotiated Plea of Not Criminally Responsible by Reason of Insanity. Before accepting a negotiated plea of not criminally responsible by reason of insanity, the court shall conduct a hearing and receive evidence sufficient to support a finding of insanity.

RULE 11B. FILING AGREEMENTS

(a) In General. The attorney for the state and the defendant may enter into a written filing agreement respecting a pending indictment, information or complaint. The filing agreement must establish a definite filing period of up to one year subject to the conditions, if any, set forth in the filing agreement.

(b) Court Approval Unnecessary. The approval of the court for the filing of a written filing agreement by the parties is unnecessary; however, a filing agreement is subject to the control of the court. If the agreement calls for the payment by the defendant of costs of prosecution such agreed-upon costs may be in any amount up to, but not exceeding, the maximum authorized fine amount for the particular crime based upon its sentencing class and need not reflect the actual costs of prosecution.

(c) Disposition During or at Expiration of Filing Period. Except where a filing agreement expressly provides otherwise as specified in subdivision (d), if the defendant has satisfied each of the filing agreement's conditions, if any, at the conclusion of the agreed upon filing period the defendant is entitled to have the filed indictment, information or complaint dismissed with prejudice. In this regard, unless the attorney for the state files a motion alleging a violation of one or more of the agreement's conditions by the defendant and seeking to have the criminal proceeding in which the indictment, information or complaint was filed reactivated by the court, at the expiration of the filing period the clerk shall enter a dismissal of the filed charging instrument with prejudice. In the event the attorney for the state files a motion during or at the end of the filing period alleging a violation of one or more of the agreement's conditions, the attorney for the state is entitled to have the criminal proceeding reactivated by the court if, following a hearing on the motion, the court finds by a preponderance of the evidence that the defendant has violated one or more of the agreement's conditions.

(d) Special Reservations in the Filing Agreement. If the attorney for the state wishes to preserve the right to reinitiate a criminal proceeding after the filing period has fully run when no breach of conditions has occurred, or to preserve the right to initiate the same or additional criminal charges against the

defendant arising out of the same event or conduct in a separate criminal proceeding while the filing period is running, the attorney for the state must expressly reserve such a right in the written filing agreement and the defendant must expressly agree to it.

RULE 12. PLEADINGS AND MOTIONS BEFORE TRIAL; DEFENSES AND OBJECTIONS

(a) Pleadings and Motions. Pleadings in criminal proceedings shall be the complaint, the indictment and the information and the pleas of not guilty, not criminally responsible by reason of insanity, guilty and nolo contendere. All other pleas and demurrers and motions to quash are abolished, and defenses and objections raised before trial which heretofore would have been raised by one or more of such other pleas or pleadings shall be raised only by motion to dismiss or to grant appropriate relief, as provided in these rules.

(b) The Motion Raising Defenses and Objections.

(1) *Defenses and Objections Which May Be Raised.* Any defense or objection which is capable of determination without the trial of the general issue may be raised before trial by motion.

(2) *Defenses and Objections Which Must Be Raised.* Defenses and objections based on defects in the institution of the prosecution or in the indictment, information, or complaint, other than that it fails to show jurisdiction in the court or to charge an offense, may be raised only by motion before trial. The motion shall include all such defenses and objections available to the defendant. Failure to present any such defense or objection as herein provided constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver. Lack of jurisdiction or the failure of the indictment, information, or complaint to charge an offense shall be noticed and acted upon by the court at any time during pendency of the proceeding.

(3) *Time of Making Motion.* All motions shall be filed within 21 days after entry of a plea unless the court specifies a different time.

(4) *Hearing on Motion.* A motion before trial raising defenses or objections shall be determined before trial unless the court orders that it be deferred for determination at the trial of the general issue. All issues of fact shall

be determined by the court with or without a jury or on affidavits or in such other manner as the court may direct.

(5) *Effect of Determination.* If a motion is determined adversely to the defendant, the defendant shall be permitted to plead if the defendant has not previously pleaded. A plea previously entered shall stand. If the motion is based upon a defect which may be cured by amendment of the complaint or information, the court may deny the motion and order that the complaint or information be amended. If the court grants a motion based on a defect in the institution of the prosecution or in the indictment, information or complaint the defendant shall be discharged.

(c) Motion In Limine. The defendant or the state may make a pretrial motion requesting a pretrial ruling on the admissibility of evidence at trial or on other matters relating to the conduct of the trial. The court may rule on the motion or continue it for a ruling at trial. In determining whether to rule on the motion or to continue it, the court should consider the importance of the issue presented, the desirability that it be resolved prior to trial, and the appropriateness of having the ruling made by the justice or judge who will preside at trial. For good cause shown the justice or judge presiding at trial may change a ruling made in limine.

RULES 13 AND 14. [RESERVED]

RULE 15. DEPOSITIONS

(a) When Taken. If it appears that a prospective witness may be unable to attend or prevented from attending a trial or hearing, that the witness' testimony is material and that it is necessary to take the witness' deposition in order to prevent a failure of justice, the court at any time after the filing of an indictment, information or complaint may upon motion and notice to the parties order that the witness' testimony be taken by deposition and that any designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place.

(b) Notice of Taking. The party at whose instance a deposition is to be taken shall give to every party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time.

(c) Defendant's Counsel. If a defendant is without counsel the court shall advise the defendant of the defendant's right and assign counsel to represent the defendant pursuant to Rule 44.

(d) How Taken. A deposition shall be taken in the manner provided in civil actions. The court at the request of a defendant may direct that a deposition be taken on written interrogatories in the manner provided in civil actions.

(e) Use. At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used if the court finds: That the witness is dead; or that the witness is out of the State of Maine, unless the court finds that the absence of the witness was procured by the party offering the deposition; or that the witness is unable to attend or testify because of sickness or infirmity; or that the party offering the deposition has been unable to procure the attendance of the witness by subpoena. Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require the party offering part of a deposition to offer all of it which is relevant to the part offered and any party may offer other parts.

(f) Objections to Admissibility. Objections to receiving in evidence a deposition or part thereof may be made as provided in civil actions.

(g) At the Instance of the State or Witness. The following additional requirements shall apply if the deposition is taken at the instance of the state or witness. The officer having custody of a defendant shall be notified of the time and place set for the examination, shall produce the defendant at the examination and shall keep the defendant in the presence of the witness during the examination. A defendant not in custody shall be given notice and shall have the right to be present at the examination.

RULE 16. DISCOVERY BY THE DEFENDANT

(a) Automatic Discovery.

(1) *Duty of the Attorney for the State.* The attorney for the state shall furnish to the defendant within a reasonable time:

(A) A statement describing any testimony or other evidence intended to be used against the defendant which:

(i) Was obtained as a result of a search and seizure or the hearing or recording of a wire or oral communication;

(ii) Resulted from any confession, admission, or statement made by the defendant; or

(iii) Relates to a lineup, showup, picture, or voice identification of the defendant.

(B) Any written or recorded statements and the substance of any oral statements made by the defendant.

(C) A statement describing any matter or information known to the attorney for the state which may not be known to the defendant and which tends to create a reasonable doubt of the defendant's guilt as to the crime charged.

(D) A copy of any notification provided to the Superior Court by the attorney for the state pursuant to Rule 6(h) that pertains to the case against the defendant.

(2) *Continuing Duty to Disclose.* The attorney for the state shall have a continuing duty to disclose the matters specified in this subdivision.

(3) *Charge of a Class D or Class E Crime in District Court.* Discovery shall be provided to a defendant charged with a Class D or Class E crime in District Court within 10 days of arraignment.

(b) Discovery Upon Request.

(1) *Duty of the Attorney for the State.* Upon the defendant's written request, the attorney for the state, except as provided in subdivision (3), shall allow access at any reasonable time to those matters specified in subdivision (2) which are within the attorney for the state's possession or control. The attorney for the state's obligation extends to matters within the possession or control of any member of the attorney for the state's staff and of any official or employee of this state or any political subdivision thereof who regularly reports or with reference to the particular case has reported to the attorney for the state's office. In affording

this access, the attorney for the state shall allow the defendant at any reasonable time and in any reasonable manner to inspect, photograph, copy, or have reasonable tests made.

(2) *Scope of Discovery.* The following matters are discoverable:

(A) Any books, papers, documents, photographs (including motion pictures and video tapes), tangible objects, buildings or places, or copies or portions thereof, which are material to the preparation of the defense or which the attorney for the state intends to use as evidence in any proceeding or which were obtained or belong to the defendant;

(B) Any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons;

(C) The names and, except as provided in Title 17-A M.R.S. § 1176(4), addresses of the witnesses whom the state intends to call in any proceeding;

(D) Written or recorded statements of witnesses and summaries of statements of witnesses contained in police reports or similar matter;

(E) The dates of birth of the witnesses the state intends to call in any proceeding.

The fact that a listed witness is not called shall not be commented upon at trial.

(3) *Exception: Work Product.* Disclosure shall not be required of legal research or of records, correspondence, reports, or memoranda to the extent that they contain the mental impressions, conclusions, opinions, or legal theories of the attorney for the state or members of his or her legal staff.

(4) *Continuing Duty to Disclose.* If matter which would have been furnished to the defendant under this subdivision comes within the attorney for the state's possession or control after the defendant has had access to similar matter, the attorney for the state shall promptly so inform the defendant.

(5) *Charge of a Class D or Class E Crime in District Court.* Discovery shall be provided to a defendant charged with a Class D or Class E crime in District Court within 10 days of the request.

(6) *Protective Order.* Upon motion of the attorney for the state, and for good cause shown, the court may make any order which justice requires.

(c) Discovery Pursuant to Court Order.

(1) *Bill of Particulars.* The court for cause may direct the filing of a bill of particulars if it is satisfied that counsel has exhausted the discovery remedies under this rule or it is satisfied that discovery would be ineffective to protect the rights of the defendant. The bill of particulars may be amended at any time subject to such conditions as justice requires.

(2) *Grand Jury Transcripts.* Discovery of transcripts of testimony of witnesses before a grand jury is governed by Rule 6.

(3) *Order for Preparation of Report by Expert Witness.* If an expert witness whom the state intends to call in any proceeding has not prepared a report of examination or tests, the court, upon motion, may order that the expert prepare and the attorney for the state serve a report stating the subject matter on which the expert is expected to testify, the substance of the facts to which the expert is expected to testify and a summary of the expert's opinions and the grounds for each opinion.

(d) Sanctions for Noncompliance. If the attorney for the state fails to comply with this rule, the court on motion of the defendant or on its own motion may take appropriate action, which may include, but is not limited to, one or more of the following: requiring the attorney for the state to comply, granting the defendant additional time or a continuance, relieving the defendant from making a disclosure required by Rule 16A, prohibiting the attorney for the state from introducing specified evidence and dismissing charges with prejudice.

RULE 16A. DISCOVERY BY THE STATE

(a) Automatic Discovery. Notice of Intention to Introduce Expert Testimony as to the Defendant's Mental State. If a defendant intends to introduce expert testimony as to the defendant's mental state, the defendant shall, within the time provided for the filing of pretrial motions or at such later time as the court

may direct, serve a notice of such intention upon the attorney for the state and file a copy with the clerk. Mental state testimony includes culpable state of mind, mental disease or defect, belief as to self-defense, or any other mental state or condition of the defendant bearing upon the issue of criminal liability. The court may for cause shown allow late filing of the notice; if it does so, it may grant additional time to the parties to prepare for trial or may make such further order as may be appropriate. The notice is not admissible against the defendant.

(b) Discovery Upon Request.

(1) *Documents and Tangible Objects*. Upon the written request of the attorney for the state, the defendant shall, within a reasonable time, permit the attorney for the state to inspect and copy or photograph or have reasonable tests made upon any book, paper, document, photograph, or tangible object which is within the defendant's possession or control and which the defendant intends to introduce as evidence in any proceeding.

(2) *Expert Witnesses*. Upon the written request of the attorney for the state, the defendant shall, within a reasonable time, furnish to the attorney for the state:

(A) A statement containing the name and address of any expert witness whom the defendant intends to call in any proceeding;

(B) A copy of any report or statement of an expert, including a report or results of physical or mental examinations and of scientific tests, experiments, or comparisons, which is within the defendant's possession or control and which the defendant intends to introduce as evidence in any proceeding.

(3) *Notice of Alibi.* No less than 10 days before the date set for trial, the attorney for the state may serve upon the defendant or the defendant's attorney a demand that the defendant serve a notice of alibi if the defendant intends to rely on such defense at the trial. The demand shall state the time and place that the attorney for the state proposes to establish at the trial as the time and place where the defendant participated in or committed the crime. If such a demand has been served, and if the defendant intends to rely on the defense of alibi, not more than 5 days after service of such demand, the defendant shall serve upon the attorney for the state and file a notice of alibi which states the place which the defendant claims to have been at the time stated in the demand and the names and addresses of the witnesses upon whom the defendant intends to rely to establish such alibi. Within 5

days thereafter, the attorney for the state shall file and serve the names and addresses of the witnesses upon whom the state intends to rely to establish the defendant's presence at the time and place stated in the demand.

If the defendant fails to serve and file a notice of alibi after service of a demand, the court may take appropriate action. If the attorney for the state fails to serve and file a notice of witnesses, the court shall order compliance. The fact that a witness' name is on a notice furnished under this subdivision and that the witness is not called shall not be commented upon at trial.

(4) *Exception: Work Product.* Disclosure shall not be required of legal research or of records, correspondence, reports, or memoranda to the extent they contain the mental impressions, conclusions, opinions, or legal theories of the attorney for the defendant.

(5) *Continuing Duty to Disclose.* If matter which would have been furnished to the attorney for the state under this subdivision comes within the attorney for the defendant's possession or control after the attorney for the state has had access to similar matter, the attorney for the defendant shall promptly so inform the attorney for the state.

(6) *Protective Order.* Upon motion of the defendant, and for good cause shown, the court may make any order which justice requires.

(c) Discovery Pursuant to Court Order.

(1) *Order for Preparation of Report by Expert Witness.* If an expert witness whom the defendant intends to call in any proceeding has not prepared a report of examination or tests, the court, upon motion, may order that the expert prepare and the defendant serve a report stating the subject matter on which the expert is expected to testify, the substance of the facts to which the expert is expected to testify, and a summary of the expert's opinions and the grounds for each opinion.

(2) *Order Permitting Discovery of the Person of the Defendant.*

(A) Upon motion and notice the court may order a defendant to:

(i) Appear in a line-up;

(ii) Speak for identification by witnesses to a crime;

(iii) Be fingerprinted, palmprinted, or footprinted;

(iv) Pose for photographs;

(v) Try on articles of clothing;

(vi) Permit the taking of specimens of material under the defendant's fingernails;

(vii) Permit the taking of samples of the defendant's blood, hair, and other material of the defendant's body which involve no unreasonable intrusion thereof;

(viii) Provide specimens of the defendant's handwriting; and

(ix) Submit to a reasonable physical or medical inspection of the defendant's body.

(B) Reasonable notice of the time and place of any personal appearance of the defendant required for the foregoing purposes shall be given by the attorney for the state to the defendant and the defendant's attorney. Provision may be made for appearances for such purposes in an order by the court admitting the defendant to bail or providing for the defendant's release.

(C) Definition. For purposes of this Rule, a defendant is a person against whom a criminal pleading has been filed.

(d) Sanctions for Noncompliance. If the defendant fails to comply with this rule, the court on motion of the attorney for the state or on its own motion may take appropriate action, which may include, but is not limited to, one or more of the following: requiring the defendant to comply, granting the attorney for the state additional time or a continuance, relieving the attorney for the state from making a disclosure required by Rule 16, prohibiting the defendant from introducing specified evidence and charging the attorney for the defendant with contempt of court.

RULE 17. SUBPOENA

(a) For Attendance of Witnesses; Form; Issuance. A subpoena may be issued by the clerk under the seal of the court or by a member of the Maine Bar. It shall state the name of the court and the title, if any, of the proceeding and shall command each person to whom it is directed to attend and give testimony at the place and during the time period specified therein. The time period shall not exceed the period covered by the trial list scheduling the case. The attorney for the subpoenaing party shall make arrangements to minimize the burden on the subpoenaed person. Upon the request of a member of the Maine Bar, the clerk shall provide a subpoena, signed and sealed but otherwise in blank. The bar member shall fill in the blanks before it is served. Although a person representing themselves may not be provided a subpoena in blank, that person has the right to secure the issuance of a subpoena by the clerk for obtaining favorable witnesses whose testimony is relevant and material.

(b) Indigent Defendants. A defendant determined indigent by the court pursuant to Rule 44(b) is entitled to subpoena an in-state witness without payment of the witness fee, mileage and cost of service of the subpoena. Such fees and costs shall be paid out of Judicial Department funds. A request to the sheriff for service shall be accompanied by a certificate of counsel that the defendant has been determined indigent.

A defendant who is financially unable to pay the fees and costs to subpoena an out-of-state witness may move ex parte for an order dispensing with payment of fees and costs. The court shall grant the motion if it finds the defendant is unable to pay the fees and costs and that the presence of the witness is necessary to an adequate defense.

(c) For Production of Documentary Evidence and of Objects. A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable, oppressive or in violation of constitutional rights. The court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys.

(d) Privileged or Protected Documentary Evidence. If a party or its attorney knows that a subpoena seeks the production of documentary evidence that

may be protected from disclosure by a privilege, confidentiality protection or privacy protection under federal law, Maine law or the Maine Rules of Evidence, the party or its attorney shall file a motion in limine, pursuant to Rule 12, prior to serving the subpoena. The motion shall contain a statement of the basis for seeking production of the documentary evidence that may be privileged or protected and shall be accompanied by a copy of the yet unserved subpoena.

Upon receipt of the motion, the clerk shall set the matter for hearing and issue a notice of hearing. The notice shall state the date and time of the hearing and direct the party from whom the documentary evidence is sought to submit the documentary evidence subject to the subpoena for *in camera* review by the court or to adequately explain in writing any reasons for a failure to submit the documentary evidence for *in camera* review. Following the clerk's issuance of a notice, the party seeking production shall serve the subpoena, the motion, and the notice on the party from whom the documentary evidence is sought in accordance with subdivision (e).

Upon receipt of the subpoena, the motion and the notice, the party to whom the subpoena is directed shall either submit the documentary evidence subject to the subpoena for *in camera* review by the court or provide in writing reasons for the failure to submit the documentary evidence for *in camera* review before the date of the hearing. After the hearing, the court may issue any order necessary to protect any party's privileges, confidentiality protections or privacy protections under federal law, Maine law or the Maine Rules of Evidence. A party that may assert a privilege, confidentiality protection or privacy protection may waive the right to a hearing and any applicable privileges or protections by notifying the court in writing that the party is waiving any applicable privileges or protections.

(e) Service. A subpoena may be served by the sheriff, by the sheriff's deputy, by a constable or by any other person who is not a party and who is not less than 18 years of age. Service of a subpoena shall be made by delivering a copy thereof to the person named and, except in the case of a person subpoenaed on behalf of the state or a person subpoenaed on behalf of an indigent defendant pursuant to subdivision (b), by tendering to the person the fee for one day's attendance and mileage allowed by law.

(f) Place of Service.

(1) *In State.* A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the State of Maine.

(2) *Out of State.* A subpoena directed to a witness outside the State of Maine shall issue under the circumstances and in the manner and be served as provided in the "Uniform Act to Secure Attendance of Witnesses from Without a State in Criminal Proceedings."

(g) For Taking Deposition; Place of Examination.

(1) *Issuance.* An order to take a deposition authorizes the issuance by the clerk of the court of subpoenas for the persons named or described therein.

(2) *Place.* A resident of this state shall not be required to travel to attend an examination outside the county where the resident resides, or is employed, or transacts business in person, or a distance of more than 50 miles one way, whichever is greater, unless the court otherwise orders. A nonresident of the state may be required to attend only in the county wherein the nonresident is served with a subpoena, or within 50 miles from the place of service, or at such other convenient place as is fixed by order of court.

(h) Enforcement of Subpoena. If a person fails to obey a subpoena served upon that person, the court may issue a warrant or order of arrest.

RULES 18 TO 20. [RESERVED]

V. TRIAL

RULE 21. PLACE OF TRIAL

(a) Venue.

(1) *In the Superior Court.* The trial shall be in the county in which the crime was committed, except as otherwise provided by law.

(2) *In the District Court.* The trial shall be in the division in which the crime was committed, except as otherwise provided by law, but if the proceeding involves two or more crimes committed in different divisions, it may be brought in any one of them.

(b) Change of Venue.

(1) *Upon Motion.* The court upon motion of the defendant shall transfer the proceeding as to the defendant to another county or division if the court is satisfied that there exists in the county or division where the prosecution is pending so great a prejudice against the defendant that the defendant cannot obtain a fair and impartial trial in that county or division. The motion may be made only before the jury is impaneled or, where trial is by the court, before any evidence is received.

(2) *By Consent.* With the consent of the defendant and the attorney for the state the court may transfer a proceeding to another county or division.

(3) *Without Consent.*

(A) In the Superior Court. Upon the court's own motion, the court may, for purposes of sound judicial administration, transfer any proceeding to a location that is both in an adjoining county and in the vicinity of where the crime was committed.

(B) In the District Court. Upon the court's own motion, the court may transfer a case to another division for hearing for the purposes of sound judicial administration. Any judgment or sentence rendered in such a transferred case shall be deemed to be the judgment and sentence of the transferring division.

(4) *Crime Committed in Two or More Counties.* The court upon motion of the defendant shall transfer the proceeding as to the defendant to another county if it appears from the indictment or information or from a bill of particulars that the crime was committed in more than one county and if the court is satisfied that in the interest of justice the proceedings should be transferred to another county in which the commission of the crime is charged. When two or more crimes are charged against the defendant, the court may upon motion of the defendant and in the interest of justice transfer all or part of the counts if any one of the counts which is transferred charges a crime committed in the county to which the transfer is ordered.

(5) *Proceedings on Change of Venue.* If the defendant is in custody, when a change of venue is ordered, the defendant shall be delivered to the custody of the sheriff of the county to which the proceeding is transferred at an appropriate time as indicated by the justice or judge. The clerk shall transmit to the clerk of the court to which a proceeding is transferred all papers in the proceeding or certified

copies thereof and any bail taken and the prosecution shall continue in that county or division.

RULE 22. TRANSFER FOR JURY TRIAL ON A CHARGE OF A CLASS D OR CLASS E CRIME

(a) Demand. In all prosecutions in the District Court the defendant may demand a trial by jury. Unless a demand for trial by jury is made not later than 21 days after arraignment, the defendant shall be deemed to have waived the right to trial by jury. In cases where a plea is entered in writing pursuant to Rule 10, the 21-day period commences to run on the date originally scheduled for arraignment.

(b) Transfer. Upon timely demand for jury trial, the District Court shall transmit to the appropriate Superior Court the District Court's entire original file in the case, any bail that has been taken and a copy of all the docket entries. Bail shall continue until further order of the Superior Court.

(c) Pretrial Motions. All timely pretrial motions not yet heard in the District Court at the time of the timely demand for jury trial shall be heard and decided in the Superior Court following the transfer, provided, however, that any motion for bail of an incarcerated defendant pending when the demand for jury trial is filed, or filed with the demand for jury trial, shall be heard and decided by the District Court at the next available court date. Any pretrial motion subsequently filed in the Superior Court that is not timely filed under Rule 12 is waived by the defendant, except that a later motion may be filed and considered when the defendant was not aware of the grounds for the motion within the time for filing such a motion.

Any pretrial motion heard and decided in the District Court prior to the time of a timely demand for jury trial shall be treated as a pretrial ruling of the Superior Court.

RULE 23. TRIAL BY JURY OR BY THE COURT

(a) Trial by Jury; Waiver. The defendant with the approval of the court may waive a jury trial. In any case in which the crime charged is murder, or a Class A, Class B, or Class C crime, the waiver shall be in writing and signed by the defendant; but the absence of a writing in such a case shall not be conclusive evidence of an invalid waiver.

(b) Jury of Less Than 12. Juries shall be of 12, but at any time before verdict the parties may stipulate in writing with the approval of the court that the jury shall consist of any number less than 12.

(c) Trial Without a Jury in the Superior Court. In a case tried in the Superior Court without a jury the court shall make a general finding and shall in addition on request find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

RULE 24. TRIAL JURORS

(a) Examination of Jurors. The parties or their attorneys may conduct the examination of the prospective jurors unless the court elects to conduct an initial examination itself. If the court elects to conduct an initial examination, when that examination is completed the court shall permit the parties or their attorneys to address additional questions to the prospective jurors on any subject which has not been fully covered in the court's examination and which is germane to the jurors' qualifications.

(b) Challenges for Cause. Challenges for cause of individual prospective jurors shall be made at the bench, at the conclusion of the examination.

(c) Peremptory Challenges.

(1) *Manner of Exercise.* Peremptory challenges shall be exercised by striking out the name of the juror challenged on a list of the drawn prospective jurors prepared by the clerk. The court may permit counsel to exercise a peremptory challenge of a juror immediately following the examination of that juror.

(2) *Order of Exercise.* Peremptory challenges shall be exercised one by one, alternatively, with the state exercising the first challenge. If there is more than one defendant, the court may allow the defendants additional peremptory challenges, permit the additional challenges to be exercised separately or jointly, and determine the order of the challenges.

(3) *Number.* If the crime charged is murder, each side is entitled to 10 peremptory challenges. If the crime charged is a Class A, Class B, or Class C crime, each side is entitled to 8 peremptory challenges. In all other criminal prosecutions each side is entitled to 4 peremptory challenges.

(d) Alternate Jurors. The court may direct that not more than 4 jurors in addition to the regular panel be called and impaneled to sit as alternate jurors as provided by law. The manner and order of exercising peremptory challenges to alternate jurors shall be the same as provided for peremptory challenges of regular jurors. In all criminal prosecutions, each side shall be entitled to one peremptory challenge of the alternate jurors. If there is more than one defendant, the court may allow the defendants additional peremptory challenges, permit the additional challenges to be exercised separately or jointly, and determine the order of the challenges.

(e) Sequestration of the Jury. In all jury trials the jury shall be allowed to separate until it retires to consider its verdict, unless the court finds it necessary to order sequestration of the jury to ensure the fairness of the trial. Upon retiring to consider its verdict, the jury shall be sequestered, but it may be allowed to separate in the discretion of the court.

(f) Note-Taking by Jurors. The court in its discretion may allow jurors to take handwritten notes during the course of the trial. If note-taking is allowed, the court shall instruct the jury on the note-taking procedure and on the appropriate use of the notes. Unless the court determines that special circumstances exist that should preclude it, jurors should be allowed to take their notes into the jury room and use them during deliberations. Counsel may not request or suggest to a jury that jurors take notes or comment upon their note-taking. Upon the completion of jury deliberations, the notes shall be immediately collected and, without inspection, physically destroyed under the court's direction.

RULE 25. DISABILITY OF A JUSTICE OR JUDGE

If by reason of death, resignation, removal, sickness or other disability, a justice or judge before whom a defendant has been tried is unable to perform the duties to be performed by the court after a verdict or finding of guilt any other justice or judge assigned thereto by the Chief Justice of the Superior Court or the Chief Judge of the District Court may perform those duties; but if such other justice or judge is satisfied that he or she cannot perform those duties because the justice or judge did not preside at the trial or for any other reason, the justice or judge may in the exercise of discretion grant a new trial.

RULE 25-A. SCHEDULING AND CONTINUANCES

(a) Definitions.

(1) "Continuance Order" is defined as an order entered by a judge that effectively removes a case from a trial list or date certain court event in response to a written motion. Absent the entry of a continuance order, a case is subject to being called for trial throughout the trial list period or for a court event on the designated date certain.

(2) "Effectively removes a case from a trial list" includes the unavailability for essential dates or when the number of days necessary for trial of the case, based on the parties' good faith estimate of the time for trial, is more than the difference between (i) the number of days remaining on a trial list at the time a motion for a continuance or a request for protection is made, and (ii) the number of days sought in the motion for a continuance or the request for protection.

(3) "Essential Dates" include jury selection days, case management days, and other dates essential to the completion of trial on the list at issue.

(4) "Request for Protection" is defined as an informal, non-docketed written request that a case not be called for trial on one or more specified days of a trial list and which, if allowed, would not effectively remove a case from a trial list. A request for protection shall only be acted upon by a judge and shall not take the place of or be treated as a motion for continuance.

(5) "Scheduled" is defined as follows: (i) For trial list cases, "scheduled" means a case has been assigned to a trial list as that term is defined in this rule; (ii) for all other cases, "scheduled" means that a date certain has been identified for a hearing or trial.

(6) "Trial list" means the list of a group of cases assigned to an actual, discrete period of time. A trial list is not simply a list of cases ready for trial. Rather, it is a list for a trial session that has beginning and ending dates, consists primarily of consecutive court days, and realistically exposes all of the assigned cases to trial.

(b) Assignment for Trial.

(1) *Jury Trial List.* In those actions set for a jury trial, the clerk of the Superior Court shall maintain a Jury Trial List. Scheduling of actions for trial from the lists shall be at the direction of the court.

(2) *Nonjury Trial List.* The court may by order provide for the setting of cases for nonjury trial upon the calendar. All actions, except those otherwise governed by statute or court orders shall be in order for trial at a time set by the court on such notice as it deems reasonable, but not less than 10 days after the scheduled completion of any discovery and expiration of time for filing any motions.

(c) Continuances. A motion for a continuance order shall be made immediately after the cause or ground becomes known. The motion must specify (1) the cause or ground for the request, (2) when the cause or ground for the request became known, and (3) whether the motion is opposed. If the position of the other party or parties cannot be ascertained, notwithstanding reasonable efforts, that shall be explained. Telephonic or other oral notice of the motion shall be given immediately to all other parties. The fact that a motion is unopposed does not assure that the requested relief will be granted. Continuances should only be granted for substantial reasons.

(d) Protections. A request for a protection from a trial list shall be made immediately after the cause or ground becomes known, and shall be submitted in a written Uniform Request for Protection Form or in a writing containing substantially the same information.

RULE 26. EVIDENCE

(a) Form. In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by these rules, the Maine Rules of Evidence or other rules adopted by the Supreme Judicial Court.

(b) Examination of Witnesses. The examination and cross-examination of each witness shall be conducted by one counsel only on each side, except by special leave of court, and counsel shall stand while so examining or cross-examining unless the court otherwise permits. Any re-examination of a witness shall be limited to matters brought out in the last examination by the adverse party, except by special leave of court.

(c) Order of Evidence. A party who has rested a case cannot thereafter produce further evidence except in rebuttal unless by leave of court.

(d) Attorney Not to be Witness. No attorney shall be permitted to be a witness for his or her client before a jury without special permission of the court.

(e) Allegation of Prior Conviction; Procedure. In a trial to a jury in which the prior conviction is for a crime that is identical to the current principal crime or is sufficiently similar that knowledge of the fact that the defendant has been convicted of the prior crime may, in the determination of the presiding justice, unduly influence the ability of the jury to determine guilt fairly, that portion of the charge alleging the prior conviction shall not be read to a jury until after conviction of the principal crime, nor shall the defendant be tried on the issue of whether he or she was previously convicted until after conviction of the principal crime, unless the prior conviction has been admitted into evidence for another reason. The jury that found the defendant guilty of the current principal crime shall determine whether the defendant was convicted of the prior alleged crime unless that jury has been discharged prior to the filing of an amended indictment, if required to charge the prior conviction.

(f) Marking of Exhibits; Insurance for Valuable Exhibits. The parties shall mark their exhibits prior to trial or hearing or during a recess. A party who offers a valuable exhibit shall be responsible for procuring insurance for it.

(g) Election by Unrepresented Defendant. In a trial involving an unrepresented defendant, the court shall: (A) advise an unrepresented defendant, out of the presence of the jury, of the necessity of choosing between exercising the right to remain silent and exercising the right to testify; (B) ensure that the defendant understands these alternative rights; and (C) give the defendant the opportunity to make an election between them. If the defendant elects to testify, the court shall advise the defendant how and when the right to testify may be exercised.

RULE 27. RECORDING OF PROCEEDINGS

(a) In the Superior Court. All proceedings shall be electronically recorded or taken down by a court reporter.

(b) In the District Court. All arraignments, trials, and evidentiary hearings on motions shall be recorded.

(c) Preservation of Record. In all other respects, Rule 76H of the Maine Rules of Civil Procedure governs the procedure for electronic recording in criminal cases, except that all recordings and records pertaining to a criminal proceeding shall be retained until the expiration of any sentence that is longer than the retention period provided for such recordings and records in civil cases by civil rule 76H(e).

(d) Expenses. Upon appropriate motion, the court shall direct that the state bear any expense for listening to recordings by or preparation of a transcript for indigent defendants.

RULE 28. COURT-APPOINTED INTERPRETERS AND TRANSLATORS

The court may provide, or when required by administrative order or statute shall provide, to individuals eligible to receive court-appointed interpretation or translation services, an interpreter or translator and determine the reasonable compensation for the service when funded by the court. An interpreter or translator shall be appropriately sworn.

RULE 29. MOTION FOR ACQUITTAL

(a) Motion for Judgment of Acquittal. Motions for directed verdict are abolished and motions for judgment of acquittal shall be used in their place. The court on motion of a defendant or on its own motion shall order the entry of judgment of acquittal of one or more crimes charged in the indictment, information or complaint after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such crime or crimes. If a defendant's motion for judgment of acquittal at the close of the evidence offered by the state is not granted, the defendant may offer evidence without having reserved the right. If a motion for judgment of acquittal is made at the close of all evidence, the court may reserve the decision on the motion, submit the case to the jury and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict.

(b) Motion After Discharge of Jury. If the jury returns a verdict of guilty, or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed within 10 days after the jury is discharged or

within such further time as the court may fix during the 10 day period. If a verdict of guilty is returned the court may on such motion set aside the verdict and enter judgment of acquittal. If no verdict is returned the court may enter judgment of acquittal. It shall not be necessary to the making of such a motion that a similar motion has been made prior to the submission of the case to the jury. A motion for new trial shall be deemed to include a motion for judgment of acquittal as an alternative.

RULE 30. ARGUMENT OF COUNSEL; INSTRUCTIONS TO JURY

(a) Time for Argument. After the evidence is closed, argument to the jury or to the court shall be permitted. The time for argument, which shall be fixed and definite, shall be set by the court prior to argument.

The attorney for the state shall argue first. The attorney for each defendant shall then argue. The attorney for the state shall then be allowed time for rebuttal.

(b) Instructions to Jury. At the close of the evidence, or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. At the same time copies of such requests shall be furnished to the other parties. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury. The court, at its election, may instruct the jury before or after argument, or both. No party may assign as error the giving or the failure to give an instruction unless the party objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which the party objects and the grounds of the objection. Opportunity shall be given to make the objection out of the hearing and presence of the jury.

The court, at its election, may provide written instructions to the jury covering all or a part of what is orally provided.

RULE 31. JURY VERDICT

(a) Return. The verdict shall be unanimous. It shall be returned by the jury to the justice in open court, in the presence of the defendant or defendants.

(b) Several Defendants. If there are two or more defendants, the jury at any time during its deliberation may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed; if the jury cannot agree with

respect to all, the defendant or defendants as to whom it does not agree may be tried again.

(c) Poll of Jury. When a verdict is returned and before it is recorded the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberations or may be discharged.

(d) Verdict on Nonbusiness Days and After Hours. The court may receive a verdict on any nonbusiness day or outside business hours, from a jury that commenced its deliberations on a regular business day.

VI. JUDGMENT

RULE 32. SENTENCE AND JUDGMENT

(a) Sentence.

(1) *Timing*. Sentence shall be imposed without unreasonable delay, provided, however, that the court may suspend the execution thereof to a date certain or determinable.

In circumstances other than addressed in Rule 38, if a stay of execution has been ordered and if at the conclusion of the stay the defendant fails to surrender into the custody of the sheriff named in the commitment order, upon the request of the named sheriff or the attorney for the state, or by direction of the court, the clerk shall issue a warrant for the defendant's arrest.

(2) *Allocution on a Conviction.* Before imposing sentence on a Class C or higher crime, the court shall address the defendant personally and inquire if the defendant desires to be heard prior to the imposition of a sentence. In a Class D or E crime the court may address the defendant and inquire if the defendant desires to be heard prior to the imposition of sentence. The defendant may be heard personally or by counsel or both. Failure of the court to so address the defendant shall not affect the legality of the sentence unless the defendant shows that he or she has been prejudiced thereby.

(3) *Statement of Reasons for Sentence of Imprisonment of One Year or More.* If the court imposes a sentence of one year or more, it shall set forth on the

record the reasons for the sentence. This requirement shall also apply in cases in which there has been a plea agreement. In a case in which there is a sentence of less than one year's imprisonment, the court may set forth on the record its reasons for the sentence. Noncompliance with this requirement shall not affect the legality of the sentence; however, it may affect appellate review by the Law Court.

(b) Judgment. A judgment of conviction shall set forth the plea, the verdict or findings and the adjudication, sentence, the defendant's date of birth and, when known, the defendant's State Identification Number. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. A judgment of conviction shall be signed by the justice or judge and entered by the clerk.

(c) Pre-sentence Investigation.

(1) *When Made.* The court may in its discretion direct the State Division of Probation and Parole to make a pre-sentence investigation and report to the court before the imposition of sentence or the granting of probation. The report shall not be submitted to the court or its content disclosed to anyone unless the defendant has pleaded or has been found guilty.

(2) *Content of Report.* The report of the pre-sentence investigation shall contain any prior criminal record of the defendant and such information on the defendant's characteristics, the defendant's financial condition, and the circumstances affecting the defendant's behavior as may be helpful in imposing sentence or in granting probation or in the correctional treatment of the defendant, and such other information as may be required by the court.

(3) *Access to Written Pre-sentence Report.*

(A) In any case in which the court has ordered a written pre-sentence report, in order to ensure that the defendant or, if the defendant is represented by counsel, both the defendant and the defendant's counsel are accorded an opportunity to examine the content of the report, sentence shall not be imposed until at least 48 hours after the report is filed with the clerk of the court, unless this time period is waived by the defendant. Consent of the defendant, if given, shall be made a part of the record. The clerk shall mail a date-stamped copy of the written pre-sentence report to the defendant or, if represented by counsel, to counsel and note the mailing in the criminal docket. Before imposing sentence, the court shall afford the defendant, counsel for the defendant, or both an opportunity to comment

upon the pre-sentence report as well as upon any information from confidential sources withheld from the written pre-sentence report and presented at the time of sentencing.

(B) Access to Written Pre-sentence Report by the State. At the time the clerk mails a date-stamped copy of the written pre-sentence report pursuant to (A) above, the clerk shall mail a date-stamped copy of that report to the attorney for the state and note the mailing in the criminal docket.

(4) *Opportunity to Hear and Comment Upon Information Presented in an Oral Pre-sentence Report.* In any case in which the court has ordered an oral pre-sentence report, before imposing sentence, the court shall afford the defendant, counsel for the defendant, or both an opportunity to both hear and comment upon any information presented as part of the oral pre-sentence report.

(d) Withdrawal of Plea of Guilty. A motion to withdraw a plea of guilty or of nolo contendere may be made only before sentence is imposed.

RULE 33. NEW TRIAL

The court on motion of the defendant may grant a new trial to the defendant if required in the interest of justice. If the trial was by the court without a jury the court on motion of a defendant for a new trial may vacate the judgment if entered, take additional testimony and direct entry of a new judgment.

A motion for a new trial based on any ground other than newly discovered evidence shall be made within 10 days after verdict or finding of guilty or within such further time as the court may fix during the 10-day period. Any motion for a new trial based on the ground of newly discovered evidence may be made only before, or within 2 years after, entry of the judgment in the criminal docket.

If an appeal is pending, the clerk of the court shall immediately send notice to the clerk of the appellate court of the filing of such a motion; the court shall conduct a hearing and either deny the motion or certify to the appellate court that it would grant the motion, but the court may grant the motion only on remand of the case.

RULE 34. ARREST OF JUDGMENT

The court on motion of a defendant shall arrest judgment if the indictment, information or complaint does not charge a crime or if the court was without jurisdiction of the crime charged. The motion in arrest of judgment shall be made prior to the entry of judgment or within 10 days thereafter or within such further time as the court may fix during the 10-day period.

RULE 35. CORRECTION OR REDUCTION OF SENTENCE

(a) Correction of Sentence. On motion of the defendant or the attorney for the state, or on the court's own motion, made within one year after a sentence is imposed, the justice or judge who imposed sentence may correct an illegal sentence or a sentence imposed in an illegal manner.

(b) Reduction of Sentence Before Commencement of Execution. The justice or judge who imposed sentence may reduce a sentence prior to the commencement of execution thereof.

(c) Reduction of Sentence After Commencement of Execution.

(1) *Timing of Motion.* On motion of the defendant or the attorney for the state, or on the court's own motion, made within one year after a sentence is imposed and before the execution of the sentence is completed, the justice or judge who imposed sentence may reduce that incompleted sentence.

(2) *Ground of Motion.* The ground of the motion shall be that the original sentence was influenced by a mistake of fact which existed at the time of sentencing.

(d) Definitions. A sentence is the entire order of disposition, including conditions of probation, suspension of sentence, and whether it is to be served concurrently with, or consecutively to, another sentence.

A revision of sentence from imprisonment to probation is a permissible reduction of sentence.

A reduction of sentence is either an obvious reduction or a change of sentence to which the defendant consents.

(e) Power of Trial Court Pending an Appeal. If an appeal is pending, the clerk shall immediately send notice to the clerk of the appellate court of the filing of the motion made under subdivisions (a) or (c) of this Rule; the court shall conduct a hearing and either deny the motion made under subdivisions (a) or (c) or certify to the appellate court that it would grant the motion, but the court may grant the motion only on remand of the case.

(f) Appeal by Defendant. A defendant may appeal from an adverse ruling of the District Court made under subdivision (a) or (c) to the Superior Court as provided under Rules 36, 36A and 36D. The determination by the Superior Court is final and no further relief is available. A defendant may appeal from an adverse ruling of the Superior Court made under subdivision (a) or (c) to the Law Court as provided by the Maine Rules of Appellate Procedure.

(g) Appeal by State. The Maine Rules of Appellate procedure governs the procedure for an appeal by the state to the Law Court from an adverse ruling of the Superior Court relative to a state-initiated motion made under subdivision (a) or (c) of Rule 35. The Maine Rules of Appellate Procedure also governs the procedure for an appeal by the state to the Law Court from an adverse ruling of the Superior Court relative to a defendant-initiated appeal under subdivision (f).

VII. APPEALS

RULE 36. APPEAL TO THE SUPERIOR COURT BY A DEFENDANT FROM AN ADVERSE RULING OF THE DISTRICT COURT PURSUANT TO RULE 35(a) or (c) FROM A REVOCATION OF PROBATION RULING, SUPERVISED RELEASE RULING OR ADMINISTRATIVE RELEASE RULING BY THE DISTRICT COURT PURSUANT TO 17-A M.R.S.A. §§ 1207, 1233 AND 1349-F RESPECTIVELY, OR FROM A DENIAL OF A PETITION SEEKING TO BE DECLARED INDIGENT FOR PURPOSES OF ASSIGNMENT OF COUNSEL ON APPEAL PURSUANT TO RULE 44A(c).

(a) Application. The Superior Court has appellate jurisdiction to entertain an appeal or petition from an aggrieved defendant in the District Court only in the following cases: an appeal or petition authorized by the Maine Bail Code; an appeal from an adverse ruling of the District Court pursuant to 15 M.R.S.A. § 2111 and Rule 35(f); an appeal from a revocation of probation ruling in a probation revocation proceeding in the District Court pursuant to 17-A M.R.S.A. § 1207(1); an appeal from a revocation of supervised release ruling in a

revocation of supervised release proceeding in the District Court pursuant to 17-A M.R.S.A. §1233; an appeal from a revocation of administrative release ruling in a revocation of administrative release proceeding in the District Court pursuant to 17-A M.R.S.A. § 1349-F or an appeal from the denial of a petition seeking to be declared indigent for purposes of assignment of counsel on appeal or from the granting of a conditional order pursuant to 15 M.R.S.A. § 2111 and Rule 44A(c). When exercising its appellate and review jurisdiction, the determination by the Superior Court is final and no further appellate relief is available.

(b) How Taken. An appeal or petition to the Superior Court relative to bail in the District Court shall be as provided in the Maine Bail Code. An appeal seeking to be declared indigent for purposes of assignment of counsel on appeal shall be as provided in Rule 44A(c). An appeal from an adverse ruling of the District Court made pursuant to subdivisions (a) or (c) of Rule 35, an appeal from a revocation of probation ruling made pursuant to 17-A M.R.S.A. § 1206, an appeal from a revocation of supervised release ruling made pursuant to 17-A M.R.S.A. § 1233 or an appeal from a revocation of administrative release ruling made pursuant to 17-A M.R.S.A. § 1349-F, must be to the Superior Court in the county where the crime on which the order was rendered was committed and shall be taken by filing a notice of appeal with the clerk of the District Court.

(c) Time for Taking Appeal. The time within which an appeal may be taken shall be 21 days from the entry on the docket of the adverse order making final disposition, except that, upon a showing of excusable neglect, the judge may, before or after the time has expired, with or without motion and notice, extend the time for filing the notice of appeal not exceeding 21 days from the expiration of the original time herein prescribed.

(d) Notice of Appeal. The notice of appeal shall set forth the title of the case and shall designate the adverse ruling making final disposition appealed from. The defendant or defendant's attorney shall file with the notice of appeal an order, as applicable, for either the transcript of the Rule 35 hearing, if held, or an order for the transcript of the revocation proceeding. The transcript order shall conform to Judicial Branch form number CR-165. The notice of appeal and transcript order shall be signed by the defendant or the defendant's attorney. If a notice is not signed, it shall not be accepted for filing. The clerk of the District Court shall mail a date-stamped copy of the notice of appeal and the transcript order form to the attorney for the state and to the Electronic Recording Division of the Judicial Branch and note the mailing in the docket.

(e) Docketing Appeal in Superior Court. Upon receipt of the notice of appeal from the defendant, the clerk of the District Court shall mark the case "Appeal to the Superior Court" on the docket. The clerk shall then forthwith transmit a copy thereof together with a copy of all docket entries to the clerk of the Superior Court. Upon receipt of the copies of the notice of appeal and the docket entries, the clerk of the Superior Court shall forthwith docket the appeal and send each party of record a written notice of the docketing, the Superior Court docket number, and the date by which the record on appeal and the reporter's transcript must be filed.

(f) Further District Court Action. The District Court shall take no further action pending disposition of the appeal by the Superior Court except the appointment of counsel for an indigent defendant, the granting of stay of execution and, when permitted by statute, the fixing or revocation of bail pending appeal.

(g) Duty of Electronic Recording Division of the Judicial Branch to Prepare and File Transcript of Rule 35 Hearing or Revocation Proceeding. Unless the Superior Court otherwise directs, within 56 days of receipt of the date-stamped copy of the transcript order, the Electronic Recording Division of the Judicial Branch shall file with the clerk of the District Court in the case of an adverse ruling made under subdivisions (a) or (c) of Rule 35 a transcript of the Rule 35 hearing, if held, and in the case of a revocation ruling, a transcript of the revocation proceeding, and furnish copies to the parties.

If the Electronic Recording Division of the Judicial Branch anticipates that a 56-day time limit will not be met, the Division shall file an application with the Superior Court requesting additional time at least 5 days before the expiration of the 56-day time limit. The Superior Court shall have discretion to grant reasonable enlargements of time. Notwithstanding this or any other provision of these rules, the party ordering the transcript shall exercise due diligence to assure its timely filing.

Following the filing of the ordered transcript, the clerk of the District Court will forthwith transmit it to the Superior Court.

(h) Statement in Lieu of Transcript.

(1) *Transcript Unavailable*. In the event an electronic recording of the proceedings is unavailable, the appellant's counsel may prepare a statement of the evidence or proceedings from the best available means, including counsel's

recollection, for use instead of a transcript. This statement shall be served on appellee's counsel within 28 days after the filing of the notice of appeal. Appellee's counsel may serve objections or propose amendments thereto within 7 days after service. Thereupon the statement and any objections or proposed amendments shall be submitted to the District Court for settlement and approval and, as settled and approved, shall be included in the record on appeal.

(2) *Transcript Unnecessary*. When the questions presented by an appeal can be determined without an examination of a transcript of proceedings in the District Court, the parties may prepare and sign a statement showing how the questions arose and were decided and setting forth only so many of the facts offered and proved or sought to be proved as are essential to a decision of the questions by the Superior Court. The statement shall include a concise statement of the points to be relied on by the appellant. It shall be submitted to the District Court within 28 days after the filing of the notice of appeal. If the statement conforms to the truth and is sufficiently complete, the District Court shall approve it for inclusion in the record on appeal.

(3) *Relief from Duty to Prepare Transcript by the Electronic Recording Division of the Judicial Branch.* If the parties agree that the preparation of a transcript of the District Court proceeding is unnecessary, they must forthwith seek an order from the Superior Court relieving the Electronic Recording Division of the Judicial Branch of its duty to prepare and file a transcript under subdivision (g).

(i) Correction of Modification of Record. If any difference arises as to whether the record on appeal truly discloses what occurred in the District Court or if anything material to either party is omitted from the record on appeal, the District Court may on motion or suggestion, after appropriate notice to the parties, supplement the record to correct the omission or misstatement or the Superior Court may on motion or suggestion or on its own initiative, direct that a supplemental record be transmitted by the District Court clerk. All other questions as to content and form of the record shall be presented to the Superior Court.

(j) Dismissal of Appeal.

(1) *Voluntary Dismissal by the Appellant*. The appellant may dismiss his or her appeal by filing a written dismissal signed by the appellant; provided that, on or after the date scheduled for argument or submission on briefs, it may be dismissed only with leave of the Superior Court.

(2) *By Stipulation*. The appeal may be dismissed by stipulation entered into by the parties and filed with the clerk of the Superior Court, provided that on or after the date scheduled for argument or submission on briefs, it may be dismissed only with the leave of the Superior Court.

(3) *Failure to Comply*. If either party fails to comply with the provisions of this Rule or Rule 36A within the times prescribed therein, a justice of the Superior Court may on motion of either party or on its own initiative, impose such sanctions as the justice deems appropriate, including involuntary dismissal of the appeal and refusal to permit one or both parties to present oral argument.

(4) *For Lack of Jurisdiction*. Whenever it appears by suggestion of the parties or otherwise that the Superior Court lacks jurisdiction of the subject matter, the Superior Court shall dismiss the appeal.

RULE 36A. RECORD ON APPEAL TO THE SUPERIOR COURT BY A DEFENDANT FROM AN ADVERSE RULING OF THE DISTRICT COURT UNDER RULE 35(a) OR (c), A REVOCATION OF PROBATION RULING, A REVOCATION OF SUPERVISED RELEASE RULING OR A REVOCATION OF ADMINISTRATIVE RELEASE RULING

(a) Contents of Appeal Record.

(1) *Contents of Rule 35 Appeal Record*. The Rule 35 appeal record shall consist of the following: a copy of all docket entries; the original of the notice of appeal with the date of the filing; all original papers relating to the Rule 35 proceeding including the motion for correction or reduction, any exhibits offered to or considered by the District Court, and the adverse order; the original of any supplemental material or of any new transcript, other than of the Rule 35 hearing, earlier supplied or to be supplied to the Superior Court pursuant to Rule 36(h); and, if authorized by the Superior Court pursuant to subdivision (b) and (c), the original of the transcript of all or a portion of the sentencing proceeding, of the trial

proceeding or, in the case involving the acceptance of a plea, of the Rule 11 proceeding.

(2) *Contents of the Section 1207, Section 1233 or Section 1349-F Appeal Record.* The record on appeal in an appeal to the Superior Court by a person whose probation is revoked in the District Court pursuant to 17-A M.R.S.A. § 1207, whose supervised release is revoked pursuant to 17-A M.R.S.A. § 1233 or whose administrative release is revoked pursuant to 17-A M.R.S.A. § 1349-F, shall consist of the following: a copy of all docket entries; all original papers relating to the revocation proceeding including the motion for revocation, any exhibits offered to or considered by the District Court, the adverse order and the notice of appeal with the date of the filing; the original of the transcript of the revocation proceeding; the original of any supplemental material or any new transcript, other than of the transcript of the revocation proceeding, earlier supplied or to be supplied to the Superior Court pursuant to Rule 36(i); and, if authorized by the Superior Court pursuant to subdivision (b) and (c), the original of the transcript of all or portion of the sentencing proceeding.

(b) Requesting Preparation of Transcript.

(1) *Requesting Preparation of Trial, Rule 11 or Sentencing Transcript by a Party*. Unless already a part of the Rule 35 appeal record by virtue of Rule 36(h), the appellant may within 7 days of filing the notice of appeal, file with the clerk of the Superior Court and serve upon opposing counsel and the Electronic Recording Division of the Judicial Branch, a motion seeking permission from the Superior Court to include in the Rule 35 appeal record all or a portion of the sentencing proceeding, of the trial proceeding or, in a case involving the acceptance of a plea, of the Rule 11 proceeding. Within 7 days of receipt of this motion, opposing counsel may, in like manner, seek to include additional portions not earlier designated.

(2) *Requesting Preparation of Sentencing Transcript by a Party.* Unless already part of the section 1207, section 1233 or section 1349-F appeal record by virtue of Rule 36(i), the appellant may within 7 days of filing the notice of appeal, file with the clerk of the Superior Court and serve upon opposing counsel and the Electronic Recording Division of the Judicial Branch, a motion seeking permission from the Superior Court to include within the section 1207, section 1233 or section 1349-F appeal record all or a portion of the sentencing proceeding. Within 7 days of receipt of this motion, opposing counsel may, in like manner, seek to include additional portions not earlier designated.

(c) Duty of Electronic Recording Division of the Judicial Branch to Prepare and File Transcript(s). The clerk of Superior Court shall forthwith send to the parties and to the Electronic Recording Division of the Judicial Branch a date-stamped copy of the Superior Court order making the final disposition of the motion or motions filed pursuant to subdivision (b). If the disposition by the Superior Court authorizes preparation, unless the Superior Court otherwise directs, within 56 days of receipt of the date-stamped copy of the order the Electronic Recording Division of the Judicial Branch shall file the transcript with the clerk of the District Court and furnish copies to the parties. If the Electronic Recording Division of the Judicial Branch anticipates that the 56-day limit will not be met, the Division shall make application for an extension as provided in Rule 36(g).

In the case of an indigent defendant, the Electronic Recording Division of the Judicial Branch shall be compensated out of Judicial Department funds. A nonindigent defendant shall make satisfactory financial arrangements with the Division within 7 days after receipt of the date-stamped copy of the Superior Court's order granting his or her motion requesting preparation of all or a portion of a sentencing, trial or Rule 11 transcript.

(d) Clerk's Responsibilities as to the Appeal Record.

(1) *Clerk's Responsibilities as to Rule 35 Appeal Record.*

(A) Subdivision (a), Paragraph (1) Materials Except for any Transcripts. Within 21 days of the filing of the notice of appeal by the appellant the clerk of the District Court shall file with the clerk of the Superior Court the contents of the Rule 35 appeal record under subdivision (a), paragraph (1), with the exception of any transcripts, and furnish copies to the parties. An indigent defendant may have a copy without charge. A nonindigent defendant shall pay for a copy at a rate to be set by the Chief Justice of the Supreme Judicial Court for nonindigent appellants.

(B) Transcripts. Following receipt of the original of the transcript of the hearing relative to the Rule 35 motion, if any, the clerk of the District Court shall forthwith transmit it, along with the original of other previously filed transcript, if any, that is part of the Rule 35 appeal record, to the clerk of the Superior Court. Thereafter, following the filing of any additional transcript by the Electronic Recording Division of the Judicial Branch that is part of the Rule 35 appeal record, the clerk shall forthwith transmit the original to the clerk of Superior Court.

(C) Notice by the Clerk of the Superior Court to the Parties. Upon docketing of all of the documents and transcripts making up the Rule 35 appeal record, the clerk of the Superior Court shall send forthwith to each counsel of record a written notice showing the date on which the appellant's and the appellee's briefs are to be filed, the date on which the appellant's reply brief, if any, is due to be filed and the date on which the case will be in order for oral argument.

(2) *Clerk's Responsibilities as to the Section 1207, Section 1233 or Section 1349-F Appeal Record.*

(A) Subdivision (a), Paragraph (2), Materials Except for any Transcripts. Within 21 days of the filing of the notice of appeal by the appellant the clerk of the District Court shall file with the clerk of the Superior Court the contents of the section 1207, section 1233 or section 1349-F appeal record under subdivision (a), paragraph (2), with the exception of any transcripts, and furnish copies to the parties. An indigent defendant may have a copy without charge. A nonindigent defendant shall pay for a copy at a rate to be set by the Chief Justice of the Supreme Justice of the Supreme Judicial Court for nonindigent appellants.

(B) Transcripts. Following receipt of the originals of the transcript of the hearing relative to the section 1207, section 1233 or section 1349-F motion, if any, the clerk of the District Court shall forthwith transmit it, along with the original of other previously filed transcripts, if any, that is part of the section 1207, section 1233 or section 1349-F appeal record, to the clerk of the Superior Court. Thereafter, following the filing of any additional transcript by the Electronic Recording Division of the Judicial Branch that is part of the section 1207, section 1233 or section 1349-F appeal record, the clerk shall forthwith transmit the original to the clerk of Superior Court.

(C) Notice by the Clerk of the Superior Court to the Parties. Upon docketing of all the documents and transcripts making up the section 1207, section 1233 or section 1349-F appeal record, the clerk of the Superior Court shall send forthwith to each counsel of record a written notice showing the date on which the appellant's and the appellee's briefs are to be filed, the date on which the appellant's reply brief, if any, is due to be filed and the date on which the case will be in order for oral argument.

RULE 36B. APPEAL TO THE SUPERIOR COURT IN JUVENILE CASES

(a) Appeal to the Superior Court. An appeal may be taken by a juvenile or a juvenile's parents, guardian, or legal custodian as provided in 15 M.R.S.A. § 3402(1) and (2), from an adjudication, an order of disposition or modification thereof, a detention order, or refusal to modify a detention order, to the Superior Court in the county in which the juvenile crime was committed. An appeal may be taken by the State from the failure of a juvenile court to order a bind-over.

An appeal is taken by filing a notice of appeal with the clerk of the District Court. The notice of appeal shall conform to form number JV-012 prepared by the Judicial Branch Forms Committee. The appellant shall file with the notice of appeal an order for those portions of the transcript the appellant intends to include in the record on appeal utilizing Judicial Branch form number CR-165. The clerk of the District Court shall transmit date-stamped copies of the notice of appeal and transcript order to the Electronic Recording Division of the District Court, the clerk of the Superior Court, and the appellee. The clerk of the District Court shall also transmit a copy of the docket entries to the clerk of the Superior Court. If the appellant orders less than the entire transcript of proceedings, the appellee shall have 7 days in which to order additional portions of the transcript utilizing Judicial Branch form number CR-165.

(b) Scope of Review. Review by the Superior Court shall be for error of law or abuse of discretion, as determined from the record on appeal.

The Superior Court may affirm, reverse, or modify any order of the juvenile court, may enter a new order of disposition, or may remand for further proceedings in the juvenile court.

Pending appeal of an adjudication or an order of disposition, the Superior Court may order a stay of execution and release pending appeal.

(c) Time for Taking Appeal. An appeal may be taken within 5 days after entry of an order of disposition or other appealed order. Upon a showing of excusable neglect, the court may, before or after the time has expired, with or without motion and notice, extend the time for filing the notice of appeal otherwise allowed for a period not to exceed 15 days from the expiration of the original time prescribed by this paragraph.

(d) Stay Pending Appeal. An appeal of a detention order shall not stay proceedings in the juvenile court. Pending an appeal from an adjudication or an

order of disposition, the juvenile court may order a stay of execution and release pending appeal.

RULE 36C. RECORD ON APPEAL IN JUVENILE CASES

(a) Contents of Record. The record on appeal shall consist of the juvenile court clerk's record and either the transcript of proceedings in the juvenile court, or by order of the Superior court, the untranscribed sound recording or a statement in lieu of transcript prepared pursuant to Rule 36(g).

(b) Contents of Juvenile Court Clerk's Record. The juvenile court clerk's record shall include a copy of the docket entries and the originals of the petition, the order of disposition or other order appealed from, all motions and actions thereon, any findings of fact, all documentary exhibits, and a list of all retained exhibits.

Documentary exhibits include papers, maps, photographs, diagrams, and other similar materials. If a documentary exhibit can be easily and inexpensively reproduced, a copy thereof shall be retained by the clerk of the juvenile court. If a documentary exhibit is of unusual bulk or weight, it shall be retained by the clerk of the juvenile court, except upon order of the Superior Court.

Exhibits which consist of tangible objects, such as weapons or articles of clothing, shall be retained by the clerk of the juvenile court, except upon order of the Superior Court.

(c) Filing of Juvenile Court Clerk's Record. The clerk of the District Court shall file the juvenile court clerk's record with the clerk of the Superior Court within 21 days of the filing of the notice of appeal and furnish copies to the parties. It shall be the appellant's responsibility to ensure that these time limits are met and to provide the clerk such assistance as is necessary in preparing the record for filing in the Superior Court. Upon a showing of good cause the Superior Court may increase or decrease the time allowed for filing the record.

(d) Filing of Transcript. The Electronic Recording Division of the Judicial Branch shall file the transcript of proceedings with the clerk of the Superior Court and furnish copies to the parties within 56 days of the filing of the notice of appeal. If the Electronic Recording Division of the Judicial Branch anticipates that it will be unable to meet the 56-day time limit, it shall file an application with the Superior Court requesting additional time at least 5 days

before the expiration of the 56-day time limit. The Superior Court shall have discretion to grant reasonable enlargements of time. Notwithstanding this or any other provision of these rules, the party requesting the transcript shall exercise due diligence to assure its timely filing.

(e) Motion to Dispense With Transcript. The appellant may move pursuant to 15 M.R.S.A. § 3405(2) to substitute the untranscribed sound recording or an agreed or settled statement of facts for the transcript of the proceedings in the juvenile court. In the event the Superior Court, in the interest of justice, orders such substitution, the clerk of the Superior Court shall transmit copies of the order to the clerk of the District Court and to the Electronic Recording Division. A statement in lieu of transcript shall be prepared pursuant to Rule 36(g) and shall be approved by the juvenile court. A statement shall be filed with the clerk of the Superior Court within the time provided for the filing of a transcript. An untranscribed sound recording shall be provided to the clerk of the Superior Court forthwith.

(f) Notice by Clerk of the Superior Court. Upon docketing the record on appeal, the clerk of the Superior court shall send forthwith to each counsel of record a written notice showing the dates on which the appellant's and the appellee's briefs are due to be filed and the date on which the case will be in order for oral argument.

(g) Failure to Comply With Rule. If either party fails to comply with this rule, a justice of the Superior Court may impose such sanctions as the justice deems appropriate, including dismissal of an appeal and refusal to permit one of both parties to present oral argument.

RULE 36D. BRIEFS AND ORAL ARGUMENT IN THE SUPERIOR COURT

(a) Time for Filing Briefs. The appellant's brief shall be filed within 35 days after the date on which the clerk of the Superior Court mails notice of the docketing of the record on appeal. The appellee's brief shall be filed within 28 days after service of the brief of the appellant; and the appellant may file a reply brief within 14 days after service of the brief of the appellee. Upon showing of good cause, the Superior Court may increase or decrease the time limits specified in this subdivision.

If an appellant fails to comply with this subdivision, the Superior Court may dismiss the appeal for want of prosecution. If an appellee fails to comply, the

appellee will not be heard at oral argument except by permission of the Superior Court.

(b) Scheduling of Oral Argument. All appeals shall be in order for oral argument 14 days after the date on which appellee's brief is due or is filed, whichever is earlier. The clerk of the Superior Court shall schedule oral argument for the first appropriate date after the appeal is in order for hearing, and shall notify each counsel of record of the time and place at which oral argument will be heard. The parties may, by agreement, waive argument and submit the matter for decision on the record and the briefs.

(c) Failure to Comply With Rule. If either party fails to comply with this rule, a justice of the Superior Court may impose such sanctions as the justice deems appropriate, including dismissal of an appeal and refusal to permit one or both parties to present oral argument.

RULES 37 TO 37B. [ABROGATED]

RULES 37C TO 37H. [ABROGATED]

RULE 38. STAY OF EXECUTION OF SENTENCE

(a) Sentence Involving Imprisonment, Probation or Administrative Release. Any portion of a sentence involving imprisonment, probation or administrative release shall be stayed if an appeal is taken and the defendant is admitted to bail pending appeal. A court may not under any circumstances place the defendant in execution of a probationary period or period of administrative release while on bail pending appeal.

(b) Sentence Involving Alternatives Other than Imprisonment, Probation or Administrative Release. Any portion of a sentence involving a sentence alternative other than imprisonment, probation or administrative release shall be stayed by the court upon request of the defendant if an appeal is taken and if the defendant is admitted to bail pending appeal. If the defendant takes an appeal and does not or cannot seek bail pending appeal or is unable to meet the bail that is set, the court upon request of the defendant may stay any portion of a sentence involving money and may stay any other sentence alternative on any terms considered appropriate. If the judgment is vacated and the stayed sentence alternative involves money, the clerk shall forthwith refund to the defendant, or to such person as the defendant shall direct, any funds deposited to cover the

defendant's money alternative. If the judgment is affirmed, the funds so deposited shall be applied by the clerk in payment of the money alternative. The clerk shall forthwith notify the defendant that such application has been made and, when applicable, the money alternative paid in full.

(c) Automatic Termination of Stay. If a judgment is affirmed on appeal, a court-ordered stay under subdivision (a) or (b) automatically terminates when the mandate of the appellate court is entered in the criminal docket of the trial court.

(d) Surrender of Defendant Following Automatic Termination of Stay. When a stay of a sentence of imprisonment automatically terminates pursuant to subdivision (c), the clerk of the trial court shall forthwith mail a date-stamped copy of the mandate to the parties and to the sheriff named in the commitment order. Within 3 days after that mailing, excluding Saturdays, Sundays and legal holidays, the defendant's appellate counsel or, if not represented by counsel on appeal, the defendant shall contact the office of the sheriff named in the commitment order and make arrangements satisfactory to the sheriff for surrendering into that sheriff's custody that day or, at the direction of the sheriff, the next regular business day. If such arrangements are not timely made, or if the arrangements are not complied with, upon the request of the named sheriff or the attorney for the State, or by direction of the court, the clerk shall issue a warrant for the defendant's arrest. Upon issuance of that warrant and necessary notice by the clerk to the court of that fact, the court, in conformity with Rule 46(f)(1), shall declare a forfeiture of the post-conviction bail because of the breach of condition.

RULES 39 TO 39D. [ABROGATED]

VIII. SUPPLEMENTARY AND SPECIAL PROCEEDINGS

RULES 40 AND 40A. [ABROGATED]

RULES 40B AND 40C. [ABROGATED]

RULE 41. SEARCH AND SEIZURE

(a) Authority to Issue Warrant. A search warrant may be issued by a judge of the District Court or justice of the peace as authorized by law.

(b) Grounds for Issuance. A warrant may be issued under this rule to search for and seize any (1) property that constitutes evidence of the commission of a crime; or (2) contraband, the fruits of crime, or things otherwise criminally possessed; or (3) property designed or intended for use or which is or has been used as the means of committing a crime; or (4) person for whose arrest there is probable cause, or who is unlawfully restrained.

(c) Issuance and Contents. A warrant shall issue only on an affidavit sworn to before a judge of the District Court or justice of the peace which establishes the grounds for issuing the warrant. The affidavit shall specifically designate the person or place to be searched and the person or property to be searched for. Before ruling on a request for a warrant the judge or justice of the peace may hear evidence under oath or affirmation which shall be taken down by a court reporter or recording equipment that is capable of producing a record adequate for purposes of review.

If the judge or justice of the peace is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, the judge or justice of the peace shall issue a warrant designating the person or place to be searched and the person or property to be searched for.

The warrant shall be directed to any officer authorized to enforce or assist in enforcing any law of the State of Maine. It shall state the names of the persons whose affidavits have been taken in support thereof. It shall command the officer to search the person or place named for the person or property specified. It shall designate the court to which it shall be returned. A copy of the Search Warrant shall promptly be filed with the District Court designated in the warrant.

The warrant and affidavit materials shall be treated as impounded until the return is filed.

(d) Execution and Return with Inventory. The warrant may be executed and returned only within 10 days after its date. Upon the expiration of the 10 days, the warrant must be returned to the District Court designated in the warrant. The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken. If the person is not present, the officer shall leave the copy of the warrant and the receipt at the premises. The return shall be accompanied by a written inventory of any property taken. The inventory shall be

made in the presence of the person from whose possession or premises the property was taken, if the person is present, or in the presence of at least one credible person other than the applicant for the warrant. It shall be verified by the officer. Upon request the judge shall deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(e) Motion for Return of Property. A person aggrieved by an unlawful seizure may move the Superior Court in the county in which the property was seized for the return of the property on the ground that it was illegally seized.

A person aggrieved by an unlawful seizure related to a charge of a Class D or Class E crime brought in District Court may move the District Court, while the District Court has jurisdiction of the charge, for the return of the property on the ground that it was illegally seized.

The court shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the court shall order that the property be restored unless otherwise subject to lawful detention. The motion may be joined with a motion to suppress evidence.

(f) Return of Papers to Clerk. The judge of the court to which a search warrant is returned shall attach to the warrant a copy of the return, inventory and all other papers in connection therewith and shall file them with the clerk of the District Court for the district and division in which the property was seized.

The judge, upon motion or upon the judge's own motion, may for good cause order the clerk to impound some or all of the warrant materials until a specified date or event.

(g) Scope and Definition. This rule does not modify any act inconsistent with it, regulating search, seizure and the issuance and execution of search warrants and under circumstances for which special provision is made. The term "property" is used in this rule to include documents, books, papers and any other tangible objects.

(h) Nighttime Search Warrant. The warrant shall direct that it be executed between the hours of 7 a.m. and 9 p.m., unless the judge or justice of the peace, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at another time.

(i) Unannounced Execution of Search Warrant. The warrant may direct that it be executed by an officer without providing notice of the officer's purpose and office if the judge or justice of the peace so directs by appropriate provision in the warrant. The judge or justice of the peace may so direct in the warrant upon a finding of reasonable cause shown that:

(1) the property sought may be quickly or easily altered, destroyed, concealed, removed or disposed of if prior notice is given;

(2) the escape of the person sought may be facilitated if prior notice is given;

(3) the person sought, the person from whom or from whose premises the property is sought, or an occupant thereof, may use deadly or nondeadly force in resistance to the execution of the warrant, and dispensing with prior notice is more likely to ensure the safety of officers, occupants or others; or

(4) such facts and circumstances exist as would render reasonable the warrant's execution without notice.

(j) Attorney for State to File Notice. If a complaint, indictment or information is filed subsequent to a search, the attorney for the state must file a notice with the clerk of the court of the district in which the search took place stating the venue of the case. The clerk will transfer the search warrant to the court having jurisdiction and venue over the criminal action instituted by the complaint, indictment, or information.

RULE 41A. MOTION TO SUPPRESS EVIDENCE

(a) Grounds of Motion. A defendant may move to suppress as evidence any of the following, on the ground that it was illegally obtained:

(1) physical objects;

(2) statements of the defendant;

(3) test results;

(4) out-of-court or in-court eyewitness identifications of the defendant.

(b) Time of Making Motion. The motion shall be filed within the time specified in Rule 12(b)(3). For good cause shown, the court may entertain the motion at a time beyond that provided in Rule 12(b)(3).

(c) Hearing. The court shall receive evidence on any issue of fact necessary to the decision of the motion.

(d) Order. If the motion is granted, the court shall enter an order limiting the admissibility of the evidence according to law. If the motion is granted or denied, the court shall make findings of fact and conclusions of law either on the record or in writing.

If the court fails to make such findings and conclusions, a party may file a motion seeking compliance with the requirement. If the motion is granted and if the findings and conclusions are in writing, the clerk shall mail a date-stamped copy thereof to each counsel of record and note the mailing on the criminal docket. If the findings and conclusions are oral, the clerk shall mail a copy of the docket sheet containing the relevant docket entry and note the mailing on the criminal docket.

RULE 42. CONTEMPT PROCEEDINGS

Procedures to implement the inherent and statutory powers of the court to impose sanctions for contempt arising out of any criminal proceeding are set out in Rule 66 of the Maine Rules of Civil Procedure.

IX. GENERAL PROVISIONS

RULE 43. PRESENCE OF THE DEFENDANT

The defendant shall be present at the arraignment, at every stage of the trial including the impaneling of the jury, and the return of the verdict, and at the imposition of sentence, except as otherwise provided by these rules. In any criminal prosecution the defendant's voluntary absence after the trial has been commenced in the defendant's presence shall not prevent continuing the trial to and including the verdict and imposition of sentence. A corporation may appear by counsel for all purposes. In any criminal prosecution for a Class D or Class E crime, the court may permit arraignment, plea, trial and imposition of sentence of a represented defendant in the defendant's absence.

RULE 44. RIGHT TO AND ASSIGNMENT OF COUNSEL

(a) Assignment of Counsel.

(1) *Before Verdict.* If the defendant in a proceeding in which the crime charged is murder or a Class A, Class B, or Class C crime appears in any court without counsel, the court shall advise the defendant of the defendant's right to counsel and assign counsel to represent the defendant at every stage of the proceeding unless the defendant elects to proceed without counsel or has sufficient means to employ counsel. If a defendant in a proceeding in which the crime charged is a Class D or Class E crime appears without counsel, the court shall advise the defendant of the defendant's right to counsel and shall assign counsel to represent the defendant unless the defendant elects to proceed without counsel or has sufficient means to employ counsel or unless the court concludes that in the event of conviction a sentence of imprisonment will not be imposed.

(2) *On Appeal.* Counsel assigned by the District Court or Superior Court shall continue to represent the defendant unless relieved by order of the trial or appellate court.

The court may assign counsel to a defendant determined indigent after verdict or finding pursuant to Rule 44A.

(b) Determination of Indigency. The court shall determine whether a defendant has sufficient means with which to employ counsel and in making such determination may examine the defendant under oath concerning the defendant's financial resources. A defendant does not have sufficient means with which to employ counsel if the defendant's lack of resources effectively prevents the defendant from retaining the services of competent counsel. In making its determination the court shall consider the following factors: the defendant's income, the defendant's credit standing, the availability and convertibility of any assets owned by the defendant, the living expenses of the defendant and the defendant's dependents, the defendant's outstanding obligations, the financial resources of the defendant's parents if the defendant is an unemancipated minor residing with his or her parents, and the cost of retaining the services of competent counsel.

If the court finds that the defendant has sufficient means with which to bear a portion of the expense of the defendant's defense, it shall appoint competent

counsel to represent the defendant but may condition its order on the defendant's paying to the court a specified portion of the counsel fees and costs of defense. When such a conditional order is issued the court shall file a decree setting forth its findings.

(c) Compensation of Counsel. Counsel appointed to represent a defendant shall be afforded reasonable compensation for services and for the costs of the defense. In fixing the amount of counsel fees the court shall consider the following factors: the professional responsibility of the Bar to assist the court in providing legal assistance to indigent defendants, the experience of appointed counsel, the difficulty of the case, the quality of the representation, the time counsel has expended, and the customary fees paid to privately retained counsel for the same or similar services. Appointed counsel shall under no circumstances accept from the defendant or from anyone else on the defendant's behalf any compensation for services or costs of defense, except pursuant to court order.

(d) [Reserved].

(e) Bar Registration Number. Any attorney representing a defendant shall provide the court with the attorney's Maine Bar Registration Number when entering their appearance.

RULE 44A. PROCEDURE FOR DETERMINATION OF INDIGENCY AFTER VERDICT OR FINDING

(a) Petition and Hearing. A defendant who has filed notice of appeal and who claims to be without financial means to prosecute the appeal may, within 10 days following the filing of the notice of appeal, file a petition in the court in which the defendant was convicted requesting that the defendant be declared indigent. The petition shall be heard promptly. The clerk shall forthwith notify the clerk of the court to which the defendant has appealed of the filing of a petition pursuant to this rule.

(b) Order. If, after hearing, the court finds that the petitioner is without financial means with which to prosecute the appeal, it shall grant the relief requested. If, after hearing, the court finds that the petitioner has financial means with which to bear a portion of the expense of prosecuting the appeal, it shall grant the relief requested, but may condition its order on the petitioner's paying a portion of the expense of prosecuting the appeal. If, after hearing, the court finds that the

petitioner has financial means with which to prosecute the appeal, the petition shall be denied.

When a conditional order is issued or when a petition is denied, the court shall file a decree setting forth its findings.

(c) Review. From the findings filed following the denial of a petition or the granting of a conditional order, the petitioner may, within 10 days after the filing thereof, appeal in writing to any justice of the Superior Court if the petition is denied in the District Court or to any justice of the Supreme Judicial Court if the petition is denied in the Superior Court. The justice, after notice to the attorney for the state, shall hear the matter de novo, and may affirm, modify or reverse the findings of the justice or judge below. If the findings are modified or reversed, the matter shall be remanded to the court below for appropriate action. The decision of the reviewing justice shall be final. During the pendency of this appeal the time periods for the perfection of the appeal on the merits shall not run, but shall commence to run upon final disposition of the petition. The clerk below shall forthwith notify the clerk of the court to which the defendant has appealed of such final disposition and the date of its entry.

RULE 44B. WITHDRAWAL OF COUNSEL

Counsel may withdraw from a case by serving notice of withdrawal on his or her client and the state and filing the notice, provided that such notice is accompanied by notice of the appearance of other counsel. Unless this condition is met, counsel may withdraw from the case only by leave of court. A court order relieving appointed counsel does not become effective until either new counsel is appointed or the defendant formally waives the right to appointed counsel. Counsel appointed by the District Court shall continue to represent the defendant until appointment of counsel by the Superior Court.

RULE 44C. PROCEDURE FOR OBTAINING FUNDS FOR EXPERT OR INVESTIGATIVE ASSISTANCE FOR INDIGENT DEFENDANT

(a) Motion.

(1) *Who May File.* A defendant found indigent or who claims to be without sufficient means to employ expert or investigative assistance necessary for his or her defense may file a motion for funds to obtain expert or investigative assistance or both.

(2) *Grounds of Motion.* The motion shall state the reasons why the assistance is necessary for an adequate defense. It may be supported by affidavit.

(b) Service of Motion. Except as provided in subdivision (c), the motion shall be served upon the attorney for the state.

(c) Ex Parte Motion. An ex parte motion shall state with particularity the reasons why it should not be served on the attorney for the state. It shall be presented to the clerk, who shall present it to the court. It shall not be docketed unless so ordered by the court.

(d) Judicial Determination of Whether to Proceed Ex Parte. The court shall determine whether the motion demonstrates good cause to proceed ex parte. If the court finds good cause, it shall then decide the merits of the motion, give the attorney for the state such notice of its order as it deems proper and order the appropriate docket entry. If the court does not find good cause to proceed ex parte, it shall order the motion docketed and served.

RULE 45. TIME

(a) Computation. In computing any period of time, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When a period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

For the purpose of this subdivision legal holidays shall include days on which the clerk's office is closed pursuant to Rule 54.

(b) Enlargement. When an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice, order the period enlarged if application therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period, permit the act to be done if the failure to act was the result of excusable neglect; however the court may not extend the time for taking any action

under Rules 29, 33, 34, 35, 36, and 36B, except to the extent and under the conditions stated in them.

(c) Unaffected by Expiration of Term. The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the continued existence or expiration of a term of court. The existence or expiration of a term of court in no way affects the power of a court to act in a criminal proceeding. This rule shall not affect the times at which a grand jury may be summoned nor shall it affect the limitations upon the power of bail commissioners.

(d) For Motions; Affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 7 days before the time specified for the hearing unless a different period is fixed by rule or order of the court. For cause shown such an order may be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and opposing affidavits may be served not less than one day before the hearing unless the court permits them to be served at a later time.

(e) Additional Time After Service by Mail. Whenever a party has the right or is required to do any act within a prescribed period after the service of a notice or other paper upon the party and the notice or other paper is served upon the party by mail, 3 days shall be added to the prescribed period.

RULE 46. CERTAIN PROCEDURAL PROVISIONS GOVERNING BAIL

(a) In General. This rule contains certain procedural provisions governing bail for a defendant or for a witness. The procedure governing pre-conviction and post-conviction bail for a defendant is generally provided by statute.

(b) Bail by a Bail Commissioner.

(1) *Required Factual Endorsements Upon Written Release Order.* Every bail commissioner upon accepting bail shall endorse upon the written release order the following facts: the date and place (town or city) of accepting bail, the court before which the prisoner is required to appear, the crime or crimes of which the prisoner is accused, the amount and conditions of bail, the names and addresses of each surety or owner of cash bail, the prisoner's mailing address and, if different, residence address and, if known, the date and time the prisoner is to appear, the

Arrest Tracking Number, the Charge Tracking Number, and the date of birth of the prisoner.

(2) *Inability of Person in Custody to Pay Bail Commissioner Fee.* A person presently in custody who is qualified to be released upon personal recognizance or upon execution of an unsecured appearance bond, whether or not accompanied by one or more conditions of bail that has been set by a judicial officer, but who in fact lacks the present financial ability to pay a bail commissioner fee, shall nonetheless be released upon personal recognizance or upon execution of an unsecured appearance bond. A bail commissioner shall not refuse to (A) examine a person to determine the person's eligibility for bail; (B) set bail; (C) prepare the personal recognizance or bond; or (D) take the acknowledgement of the person in custody, because a person in custody lacks the present financial ability to pay a bail commissioner fee.

(c) Bail Given on Appeal; Place of Deposit. Whenever cash or other property is given on appeal, it shall be deposited with the clerk of the trial court on the next regular business day.

(d) Review of Bail by or Appeal to a Single Justice of the Supreme Judicial Court.

(1) *Petition.* A petition for review of pre-conviction bail under 15 M.R.S.A. § 1029 shall be filed in the Superior Court. The clerk shall promptly deliver a copy of the petition to any Justice of the Supreme Judicial Court designated by a general order or special assignment of the Chief Justice to sit in single justice matters in that county. On receipt of the petition, the trial court's order and the available record of the hearing below, the assigned Justice will either conduct a hearing de novo or conduct a review, depending upon what is required under the law. Briefing and oral argument may be dispensed with by the assigned Justice.

(2) *Appeal.* An appeal of post-conviction bail under 15 M.R.S.A. § 1051, or an appeal of revocation of pre-conviction bail under 15 M.R.S.A. § 1097 or revocation of post-conviction bail under 15 M.R.S.A. § 1099-A shall be taken by filing a notice of appeal with the clerk of the Superior Court. The clerk shall promptly deliver a copy of the notice to any designated Justice of the Supreme Judicial Court. On receipt of the notice of appeal, the trial court's order and the available record of the hearing below, the assigned Justice shall review the record

and, with or without briefing or argument, determine whether the trial court's order is without a rational basis.

(e) Statement to Person Offering Surety for a Defendant. Every judicial officer or clerk who accepts property, including money, as security for bail shall first provide to the prospective surety the oral and written advice required under 15 M.R.S.A. § 1072-A(2) and (3) respectively, as well as a copy of the written release order pertaining to the defendant required under 15 M.R.S.A. § 1072-A(1).

(f) Forfeiture.

(1) *Declaration.* If there is a breach of condition of a bond, the court shall declare a forfeiture of the bail and give prompt notice to the obligors.

(2) *Setting Aside.* The court may direct that a forfeiture be set aside, upon such conditions as the court may impose, if it appears that justice does not require the enforcement of the forfeiture.

(3) *Enforcement.* When no motion to set aside a forfeiture has been made within 30 days of notice of the declaration of forfeiture, the court shall enter a judgment of default and execution may issue thereon. By entering into a bond the obligors submit to the jurisdiction of the court and their liability may be enforced on motion without the necessity of an independent action.

(4) *Remission.* After entry of such judgment, the court may remit it in whole or in part under the conditions applying to the setting aside of forfeiture in paragraph (2) of this subdivision.

(g) Exoneration. When the condition of the bond has been satisfied, the court shall exonerate the obligors and release any bail.

(h) Bail for Witness. If it appears by affidavit that the testimony of a person is material in any criminal proceeding and if it is shown that it may become impracticable to secure that person's presence by subpoena, the court may order the arrest of that person and may require that person to give bail for his or her appearance as a witness. If the person fails to give bail the court may commit that person to the custody of the sheriff pending final disposition of the proceeding in which the testimony is needed, may order that person's release if he or she has

been detained for an unreasonable length of time and may modify at any time the requirement as to bail.

If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court on written motion of the witness and upon notice to the parties may direct that the witness' deposition be taken. After the deposition has been taken the court may discharge the witness.

RULE 47. MOTIONS AND MOTION DAY

(a) Motions. An application to the court for an order shall be by motion. A motion other than one made during a trial or hearing shall be in writing unless the court permits it to be made orally. It shall state with particularity the grounds upon which it is made, the rule or statute invoked if the motion is brought pursuant to a rule or statute, and the relief or order sought. It may be supported by affidavit. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(b) Motion Day. Unless local conditions make it impracticable, the Chief Justice of the Superior Court and the Chief Judge of the District Court shall establish for each county and division regular times and places, at intervals sufficiently frequent for the prompt dispatch of business, at which motions requiring notice and hearing may be heard and disposed of; but the court at any time or place and on such notice, if any, as it considers reasonable may make orders for the advancement, conduct and hearing of actions.

To expedite its business or for the convenience of the parties, the court may make provision for the submission and determination of motions without oral hearing upon brief written statements of the reasons in support and opposition.

(c) Motion for Enlargement of Time or for Continuance. Any party filing a motion for enlargement of time to act under these rules or for a continuance, except a continuance addressed in Rule 25-A, shall file with the motion a statement indicating whether the motion is opposed or unopposed. If the position of the other party or parties cannot be ascertained, notwithstanding reasonable efforts, that shall be stated. The fact that a motion is unopposed does not assure that the requested relief will be granted.

(d) Nontestimonial Hearings Using Audio or Video Equipment. The use of telephone, audio or video conference equipment is encouraged for

nontestimonial hearings and scheduling matters. A party may request this use or the court may act upon its own initiative. The court shall direct the terms of use, and, except when only scheduling matters are to be discussed, the court shall attempt to assure that the hearing is recorded by the best practicable means.

RULE 48. DISMISSAL

(a) By the Attorney for the State. The attorney for the state may file a written dismissal of an indictment, information or complaint or any count of an indictment, information or complaint, setting forth the reasons for the dismissal and the prosecution relating to that dismissal shall thereupon terminate. Such a dismissal may not be filed during the trial without the consent of the defendant.

(b) By Court.

(1) If there is unnecessary delay in bringing a defendant to trial, the court may upon motion of the defendant dismiss the indictment, information or complaint. The court shall direct whether the dismissal is with or without prejudice.

(2) If no indictment has been returned by the grand jury within 6 months of the initial appearance of the defendant or after the 3rd regularly scheduled session of the grand jury after the initial appearance, whichever occurs first, the clerk shall enter a dismissal of the complaint, unless the attorney for the state shows the court good cause why the complaint should remain on the docket. The dismissal pursuant to this paragraph shall be without prejudice.

(c) Filing. [Abrogated]

RULE 49. SERVICE AND FILING OF PAPERS

(a) Service: When Required. Written motions other than those which are heard ex parte, written notices, designations of the record on appeal and similar papers shall be served upon each of the parties.

(b) Service: How Made. Whenever under these rules or by an order of the court service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made in the manner provided in civil actions.

(c) Notice of Orders. Immediately upon entry of an order made on a written motion subsequent to arraignment the clerk shall mail or deliver to each party a notice thereof and shall make a note in the docket of the mailing or delivery.

(d) Filing. Papers required to be served shall be filed with the court. Papers shall be filed in the manner provided in civil actions. All court notices in a case will be sent to the attorney for the state who has been designated by the District Attorney or Attorney General to receive notices from a court. Changes in designations of attorneys to receive notice must be filed with the Office of Information Technology. If an attorney for the state other than the designee has entered their appearance and wishes to receive notice, that attorney must make arrangements with the court by filing an appropriate request in the case notice with the attorney's Maine Bar Registration Number.

(e) Form of Papers. All papers filed with the court may be typewritten, printed or otherwise duplicated upon opaque, unglazed paper 8 1/2 X 11 inches in size. The typed or printed matter must be double spaced except for quotations, headnotes and footnotes and must be legible. All typed or printed matter must appear in at least 12 point type, except that footnotes and quotations may appear in 11 point type. Only one side of the paper may be used. Each paper shall contain a caption setting forth the name of the court, the county or location in which the action is pending, the docket number, the title of the case, and a brief descriptive title of the paper.

RULE 50. CLERICAL MISTAKES

Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter, while the appeal is pending may be so corrected with leave of the appellate court.

RULE 51. EXCEPTIONS UNNECESSARY

Exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a

party, at the time the ruling or order of the court is made or sought, makes known to the court the action which the party desires the court to take or the party's objection to the action of the court and the party's grounds therefor; but if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice the party.

RULE 52. HARMLESS ERROR AND OBVIOUS ERROR

(a) Harmless Error. Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

(b) Obvious Error. Obvious errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

RULE 53. BOOKS AND RECORDS KEPT BY THE CLERK AND ENTRIES THEREIN

(a) Criminal Docket. The clerk shall keep the criminal docket and shall enter therein each criminal proceeding. Proceedings shall be assigned docket numbers. Upon the filing of an indictment, information or complaint with the court, the first and last name and middle initial, and, if known, the State Identification Number, the Arrest Tracking Number, the Charge Tracking Number, date of birth and address of the defendant shall be entered upon the docket. Thereafter the name and address of the attorney appearing for any defendant shall be entered. All papers filed with the clerk, all appearances, pleas, motions, orders, verdicts, findings and judgments shall be noted chronologically upon the docket and shall be marked with the docket number. The notations shall briefly show the nature of each paper filed, writ issued, plea entered, or motion made and the substance of each order or judgment of the court and of the returns showing execution of process. The notation of an order or judgment shall show the date of the judgment or order, the date the judgment or order was received by the clerk and the date the notation is made.

(b) Custody of Papers by Clerk. The clerk shall be answerable for all records and papers filed with the court, and they shall not be taken from the clerk's custody without special order of the court; but the parties may at all times have copies.

(c) Other Books and Records. The clerk shall keep such other books and records as may be required from time to time by the Chief Justice of the Superior Court or the Chief Judge of the District Court.

RULE 53A. CUSTODY OF NONDOCUMENTARY EXHIBITS.

(a) During Trial or Hearing. During trial or hearing the clerk shall retain custody of all nondocumentary exhibits offered in evidence, whether admitted or excluded.

(b) After Trial or Hearing. At the conclusion of trial, counsel and self-represented parties shall, to the extent practicable, make arrangements for the withdrawal of any nondocumentary exhibit from the custody of the clerk. If it is necessary to preserve any exhibit for purposes of appeal, counsel and self-represented parties shall, whenever possible, arrange for a photograph of the exhibit. If no substitution is made for a bulky exhibit, the appellant is responsible for its transportation.

(c) After Final Determination. After the final determination of any action, any remaining nondocumentary exhibit shall be removed from the custody of the clerk by the offering party, unless otherwise ordered by the court. If any such exhibit is not so removed within 60 days after final determination, the clerk may, after 14 days' notice to the offering party, dispose of the exhibit in a reasonable manner, including transfer to the State for disposition as abandoned property.

RULE 54. COURTS AND CLERKS

(a) Court Always Open. The court shall be deemed always open for the purpose of filing any proper paper, of issuing and returning process and of making motions and orders.

(b) Clerk's Office. The clerk's office with the clerk or a deputy in attendance shall be open during such hours as the Chief Justice of the Superior Court or the Chief Judge of the District Court may designate on all days except Saturdays, Sundays, and legal holidays, and except such other days as the Chief Justice of the Superior Court or the Chief Judge of the District Court may designate.

RULE 55. VISITING LAWYERS

(a) In General. Any member in good standing of the bar of the highest court of any other state or of the District of Columbia may at the discretion of the court, on motion by a member of the bar of this state who is actively associated with a member of such other bar in a particular action, be permitted to practice in that action. The court may at any time for good cause revoke such permission without hearing. An attorney so permitted to practice in a particular action shall at all times be associated in such action with a member of the bar of this state, upon whom all process, notices and other papers shall be served and who shall sign all papers filed with the court and whose attendance at any proceeding may be required by the court.

(b) Appearances by Service Lawyers. With the written authorization (which may be general and not confined to a particular case) of the senior legal officer of any one of the armed services on active duty within the service district which includes this state, a member of the bar of any other state or of the District of Columbia on active duty with that armed service may appear in court in this state to represent, in defending against charges of Class D or Class E crimes, enlisted personnel on active duty of pay grades of E-4 and below who might not otherwise be able to afford proper legal assistance and who consent to such representation. A copy of each such written authorization by the senior legal officer shall be filed with the Clerk of the Law Court.

RULE 56. LEGAL ASSISTANCE BY LAW STUDENTS

(a) Permitted Activities on Behalf of a Criminal Defendant. An eligible law student may appear in court in this state, on behalf of any indigent receiving legal services through an organization providing legal services to the indigent, which organization has been approved by the Supreme Judicial Court, if the person on whose behalf the student is appearing has indicated in writing consent to that appearance and the supervising lawyer has also indicated in writing approval of that appearance, in the following proceedings:

(1) Any criminal proceeding in which the defendant does not have the right to the assignment of counsel under any constitutional provision, statute or rule. In such cases the supervising lawyer is not required to be personally present in court if the person on whose behalf the appearance is being made consents to the supervising lawyer's absence.

(2) Any criminal proceeding in which the defendant has the right to the assignment of counsel under any constitutional provision, statute, or rule. In such cases the supervising lawyer shall be personally present throughout the proceedings and shall be fully responsible for the manner in which they are conducted.

(3) Any post-conviction review proceeding. In such cases the supervising lawyer shall be personally present throughout the proceedings and shall be fully responsible for the manner in which they are conducted.

(b) Permitted Activities on Behalf of the State. An eligible law student may appear in any criminal proceeding on behalf of the state with the written approval of the prosecuting attorney or the authorized representative of the prosecuting attorney. If the defendant in a criminal proceeding has a right to counsel under any constitutional provision, statute or rule and is represented by counsel in that criminal proceeding, the prosecuting attorney or the authorized representative of the prosecuting attorney is required to be personally present throughout the proceeding and shall be fully responsible for the manner in which it is conducted.

(c) Written Consent and Approval. In each case the written consent and approval referred to above shall be filed in the record of the case and shall be brought to the attention of the court.

(d) Other Conditions. The provisions of Maine Rules of Civil Procedure 90(b), (c), (d), (e), (f), and (g), are hereby incorporated in this rule.

RULE 57. DEFINITIONS

Unless otherwise specified, the following words or variants shall have the following meanings:

(a) Arrest Tracking Number (ATN). "Arrest Tracking Number" or "ATN" is a unique identifier for a formal action undertaken by a criminal justice agency that initiates criminal charges. If the criminal justice agency initiating criminal charges is a law enforcement agency, the formal action required is the custodial arrest and fingerprinting of the individual or the issuance or delivery to the individual of a Uniform Summons and Complaint. If the criminal justice agency initiating criminal charges is a prosecutorial office (District Attorney office

or office of the Attorney General), the formal action is the filing of a complaint, the return of an indictment by a grand jury, or the filing of an information relative to an individual. The ATN is a seven-character alphanumeric field consisting of six numbers followed by one letter. The ATN is assigned by the Maine State Police upon the request of a criminal justice agency. A request must be made through the Maine Telecommunications and Radio Operations (METRO) system. The following criminal charges do not require an ATN: any Class D or Class E crime in Title 12 or Title 29-A other than a Class D or Class E crime involving hunting while under the influence of intoxicating liquor or drugs or with an excessive blood-alcohol level, or the operation or attempted operation of a watercraft, all-terrain vehicle, snowmobile or motor vehicle while under the influence of intoxicating liquor or drugs or with excessive blood-alcohol level.

(b) Attorney for the State. "Attorney for the state" means the Attorney General, any authorized full-time or part-time deputy attorney general, assistant attorney general or staff attorney; a district attorney, any authorized full-time or part-time deputy or assistant of a district attorney; or such other person or persons as may be authorized by law to act as representatives of the State of Maine in a criminal proceeding.

(c) Charge Tracking Number (CTN). "Charge Tracking Number" or "CTN" is a unique identifier that designates each charge associated with the formal action undertaken by a criminal justice agency initiating criminal charges that is designated by the ATN. The CTN is a three-character numeric field assigned to each charge and is added to the ATN with no hyphen or slash separating the two. The CTN is assigned by the Maine State Police upon the request of a criminal justice agency. A request must be made through the Maine Telecommunications and Radio Operations (METRO) system. A criminal charge that does not require an ATN under subdivision (1) of this rule does not require a CTN.

(d) District Court Judge. "District Court Judge" includes a justice or active retired justice of the Supreme Judicial Court or a justice or active retired justice of the Superior Court sitting in the District Court by assignment.

(e) State Identification Number. "State Identification Number" means the number assigned to a person by the State Bureau of Identification when the person first becomes known to the Bureau. Events reported to the State Bureau of Identification that cause the assignment of a "State Identification Number" to a person by the Bureau include the custodial arrest and fingerprinting or the issuance or delivery of a Uniform Summons and Complaint as reported by a law

enforcement agency, the filing of a complaint, the return of an indictment by a grand jury or the filing of an information relative to an individual as reported by a prosecutorial office (District Attorney office or office of the Attorney General), the final disposition of a case as reported by the courts, and the intake of an inmate by the Department of Corrections.

(f) Superior Court Justice. "Superior Court Justice" includes a justice or active retired justice of the Supreme Judicial Court or a judge or active retired judge of the District Court sitting in the Superior Court by assignment.

RULES 58 TO 64. [RESERVED]

X. PROCEEDINGS FOR POST-CONVICTION REVIEW

RULE 65. NATURE OF THE PROCEEDING

An action for post-conviction review pursuant to 15 M.R.S.A. ch. 305-A shall be docketed by the clerk on the criminal docket of the Superior Court.

RULE 66. PERSONS ENTITLED TO BRING A PETITION; GROUNDS FOR RELIEF

Any person who satisfies the prerequisites of 15 M.R.S.A. § 2124 may initiate a petition for post-conviction review asserting therein one or more claims for relief specified in 15 M.R.S.A. § 2125.

RULE 67. FORM AND CONTENTS OF THE PETITION

(a) Form Prescribed by Supreme Judicial Court. The petition shall be in the form prescribed by the Supreme Judicial Court.

(b) Challenges Allowed in Single Petition. The petition shall be limited to the assertion of a claim for review of one or more criminal judgments arising from a single trial or from a single proceeding for the entry of one or more pleas of guilty or nolo contendere, or of a single post-sentencing proceeding under 15 M.R.S.A. § 2124(2). If a petitioner desires to attack the validity of criminal judgments arising from two or more trials or plea proceedings or two or more post-

sentencing proceedings, the petitioner shall do so by separate petitions. The court in its discretion may order separate consideration of criminal judgments challenged in the same petition or may order consideration together of criminal judgments or post-sentencing proceedings which are challenged in separate petitions.

(c) Designation of Respondent. The petition shall designate the State of Maine as the respondent.

(d) Identification of Criminal Judgment, Post-sentencing Proceeding, Court, and Date. The petition shall identify the criminal judgment which is challenged. If the petition challenges a post-sentencing proceeding, it shall identify both the post-sentencing proceeding and the original criminal judgment which generated the post-sentencing proceeding. It shall identify the court and the county or division in which the criminal judgment was entered, the name of the case and the docket number, the date of entry of judgment, and the sentence imposed.

(e) Identification of Restraint or Impediment; Reasons for Relief and Facts in Support Thereof. The petition shall briefly identify the incarceration, other restraint or impediment under 15 M.R.S.A. § 2124 which affects the petitioner. It shall briefly state each reason for relief and the essential facts in support of each reason. Argument, citation, and discussion of legal authorities shall be omitted from the petition, but may be filed in a separate document.

(f) Specification of Relief Sought. The petition shall specify the relief requested. Failure to specify the precise relief requested or failure to specify the appropriate relief available shall not preclude the assigned justice from granting any relief to which the petitioner may be entitled.

RULE 68. FILING OF THE PETITION

The petition shall be filed as provided in 15 M.R.S.A. § 2129(1)(A).

RULE 69. ASSIGNED COUNSEL

(a) Compliance With 15 M.R.S.A. ch. 305-A by Petitioner. A petitioner who desires to have counsel appointed either before or after final disposition of the petition shall comply with the procedure provided in 15 M.R.S.A. § 2129(1)(B).

(b) Determination of Indigency; Appointment and Compensation of Counsel. The determination of indigency and the appointment and compensation of counsel shall be governed by the provisions of Rules 44 and 44A.

(c) Continuing Duty of Counsel to Represent Petitioner. Counsel appointed by the assigned justice before final disposition of the petition shall continue to represent the petitioner on appeal unless relieved by order of the assigned justice or the Law Court.

RULE 69-A. ASSIGNED JUDGE OR JUSTICE

(a) Assignment by Chief Justice of the Superior Court or by Designee. The Chief Justice of the Superior Court or the Chief Justice's designee shall assign petitions for post-conviction review.

(b) Assignment of Trial Judge or Justice. (1) When the petition addresses a conviction in the Superior Court, the trial justice who imposed sentence or ordered commitment under 15 M.R.S.A. § 103 may be assigned to the post-conviction review proceeding unless the trial justice is disqualified or is otherwise unavailable.

(2) When the petition addresses a conviction or juvenile proceeding in the District Court, the trial judge who imposed sentence or juvenile disposition may be assigned to act as a Superior Court Justice to hear the post-conviction review proceeding, unless the judge is disqualified or is otherwise unavailable.

(c) Assignment Other Than of the Trial Judge or Justice. If the trial justice or judge is not assigned under subdivision (b), the petition for post-conviction review may be assigned to the regular criminal docket, or assigned to any judge or justice.

RULE 70. REVIEW OF THE PETITION BY ASSIGNED JUSTICE; SUMMARY DISMISSAL; RESPONSE; AMENDMENT TO THE PETITION; WITHDRAWAL OF PETITION; DISMISSAL OF PETITION WITH PREJUDICE FOR FAILURE TO PROSECUTE

(a) Review of Petition by Assigned Justice. The assigned justice shall promptly examine the petition.

(b) Summary Dismissal. If it plainly appears from the face of the petition and any exhibits annexed to it that the petition fails to show subject matter jurisdiction or to state a ground upon which post-conviction relief can be granted, the assigned justice shall enter an order for the summary dismissal of the petition, stating the reasons for the dismissal. The assigned justice shall cause the petitioner to be notified of the dismissal and the reasons for it.

(c) Response; Amendment to Petition. If the petition is not summarily dismissed pursuant to subdivision (b), the respondent shall file a response as follows:

(1) If the petitioner has been represented by counsel at the time of the filing of the petition or the petitioner does not desire to retain counsel, or, if indigent, to have counsel appointed, the assigned justice shall order the respondent to file a response pursuant to Rule 71 within 20 days of the date the order is received.

(2) If the petitioner has not been represented by counsel at the time of the filing of the petition but expresses an intent to retain counsel forthwith or has made application to have counsel appointed pursuant to Rule 69, the assigned justice shall provide the nonindigent petitioner the opportunity to retain counsel or shall appoint counsel for the indigent petitioner. Within 45 days of the date counsel enters appearance or is appointed, counsel shall file either an amended petition or notice that no amended petition is to be filed. Additional time may be granted for cause shown. Following the filing of an amended petition or notice that no amended petition is to be filed, the clerk of the Superior Court shall mail a copy thereof to the respondent. Within 20 days of receipt of such copy, the respondent shall file a response pursuant to Rule 71.

(3) Following the filing of a response by respondent pursuant to paragraphs (1) and (2), a petition may be further amended only by leave of the assigned justice for good cause shown. If the assigned justice allows a petition to be amended after the filing of a response, the respondent may file an additional response within 15 days of receipt of the amended petition.

(d) Withdrawal of Petition. A petitioner, at any time prior to final disposition, may move to withdraw a petition without such a withdrawal operating as an adjudication upon the merits by filing a signed request. The assigned justice shall grant such motion in the absence of a showing by the respondent that it would be unfairly prejudiced thereby. A motion to withdraw without prejudice may be

signed by petitioner's counsel rather than by the petitioner personally if the motion includes a representation by counsel that the petitioner has instructed counsel to seek a withdrawal of the petition.

(e) Dismissal of Petition for Failure to Prosecute. The assigned justice, on his or her own initiative or on motion of the respondent, after notice to the parties, and in the absence of a showing of good cause to the contrary by the petitioner, shall dismiss a petition for want of prosecution at any time more than one year after the last docket entry showing any action taken therein by the petitioner other than a motion for a continuance. Unless the assigned justice in the order for dismissal otherwise specifies, such dismissal shall operate as an adjudication upon the merits.

RULE 71. RESPONSE

The response shall be by answer, motion to dismiss, or notice that the respondent does not contest the petition. If an answer is filed, it shall respond to the allegations of the petition. Argument, citation, and discussion of legal authorities shall be omitted from the response, but may be filed in a separate document. The respondent may annex to its response or file with its response whatever further documents it believes may assist the assigned justice in determining the issues raised by the petition. Additional time to file a response may be granted for cause shown.

RULE 72. DISCOVERY

A party shall not be entitled to discovery in a proceeding for post-conviction review unless, and to the extent that, the assigned justice, upon motion and for good cause shown, grants leave for discovery. If leave for discovery is granted, the assigned justice shall specify the appropriate means of discovery, provided that depositions shall be ordered only pursuant to Rule 15.

RULE 72A. CONFERENCE FOLLOWING THE FILING OF THE PLEADINGS

(a) Scheduling. Following the filing of the pleadings, the clerk of the Superior Court shall as soon as possible schedule a conference and give notice to the parties thereof. The assigned justice may dispense with a conference.

(b) Matters to Be Considered at Conference. The assigned justice and the parties shall consider the following matters at the conference and the assigned justice shall enter an order which shall state the action taken by the assigned justice or agreed upon by the parties with respect to each of the said matters:

(1) The assigned justice's action in disposing of all motions pending at the time of the conference.

(2) The assigned justice's action with respect to the filing by the parties of further motions and the date by which such filings shall be accomplished.

(3) Any instruction of the assigned justice to the parties with respect to further amendment of the pleadings in the case and the date by which such further amendment of the pleadings shall be completed.

(4) The record upon which the final disposition of the petition is to be made by the assigned justice.

(5) The assigned justice's determination as to whether an evidentiary hearing is required.

(6) The time and place of the evidentiary hearing.

(7) A list of all witnesses to be called by the parties at the evidentiary hearing. The assigned justice shall specify a date by which notice shall be given to the assigned justice and the opposing party of any additions to this list of witnesses by any party.

(8) If there is to be no dispositional hearing, unless dispensed with by the parties and the assigned justice, the briefing schedule, including oral argument.

(9) The assigned justice may direct that the expected testimony of some or all of the expected witnesses be presented to the justice by affidavit sworn by the expected witness, and schedule a further conference to determine, after receipt and review of the affidavits, if the expected evidence justifies proceeding to a live testimonial hearing or if the matter may be resolved based on affidavits and briefing.

RULE 73. EVIDENTIARY HEARING, BRIEFS AND ARGUMENTS

(a) Evidentiary Hearing. At the time of the conference, or if a conference is dispensed with, within 30 days of the date the response is filed, either the petitioner or the respondent may request an evidentiary hearing. If either party makes such a request, the assigned justice shall, after a review of the pleadings and any other material of record, determine whether an evidentiary hearing is required. If the justice determines that an evidentiary hearing is required, the hearing may be ordered held in any place open to the public in any county.

(b) Time for Briefs When No Hearing. Unless a briefing schedule has earlier been incorporated in an order arising out of the conference, if no request for an evidentiary hearing has been made or if the assigned justice determines no evidentiary hearing is required, the clerk shall send a briefing schedule to the parties as follows: The petitioner's brief shall be filed within 30 days after the last day on which a hearing could have been requested; the respondent shall file its brief within 30 days after receipt of the petitioner's brief; and the petitioner may file a reply brief within 14 days after receipt of the respondent's brief.

(c) Time for Briefs When Hearing Held. Unless otherwise ordered by the assigned justice, if an evidentiary hearing is held the petitioner's brief shall be filed within 30 days of the close of the hearing; the respondent shall file its brief within 30 days of receipt of the petitioner's brief; and the petitioner may file a reply brief within 14 days after receipt of the respondent's brief.

(d) Oral Argument. Unless dispensed with by the assigned justice, if no evidentiary hearing is held the clerk shall schedule oral argument on the next available date after the last brief is received. Oral argument may be waived by the parties.

RULE 73A. MOTION FOR JUDGMENT

After the petitioner has completed the presentation of evidence at the hearing on the petition, the respondent, without waiving its right to offer evidence in the event the motion is not granted, may move for judgment on the ground that upon the facts and the law the petitioner has shown no right to relief.

RULE 74. BAIL PENDING FINAL DISPOSITION OF THE PETITION

(a) Application to Assigned Justice. A petitioner may apply to the assigned justice for bail pending final disposition.

(b) Standards Governing Bail. An assigned justice may order the release of the petitioner on bail if:

(1) The assigned justice is satisfied, on the basis of the pleadings, or the pleadings supplemented by any evidence received at a hearing on the petition pursuant to Rule 73, that the petitioner has a reasonable likelihood of prevailing on the petition;

(2) release on bail is appropriate given the crime and the nature of the ultimate relief contemplated by the assigned justice if the petitioner were to prevail; and

(3) the standards and conditions governing bail contained in 15 M.R.S.A. § 1051 (2) and (3) are satisfied.

(c) Revocation of Bail Pending Final Disposition of Petition. An assigned justice may revoke an order of bail granted pending final disposition of the petition upon determination made after notice and opportunity for hearing that:

(1) the petitioner has violated a condition of bail; or

(2) the petitioner has been charged with a crime allegedly committed while the petitioner was on release pending final disposition of the petition.

RULE 75. BAIL PENDING APPEAL WHEN RELIEF IS GRANTED TO THE PETITIONER

(a) Application to Assigned Justice. A petitioner who has been granted relief may apply to the assigned justice for bail pending appeal.

(b) Standards Governing Bail Pending Appeal. The assigned justice may order the release of the petitioner on bail pending appeal when relief has been granted to the petitioner if the requirements of Rule 74(b)(2)-(3) are satisfied.

(c) Revocation of Bail Granted Pending Appeal. The assigned justice may revoke an order of bail granted pending appeal pursuant to Rule 74(c).

RULE 75A. STAY OF EXECUTION

(a) Bail Pending Final Disposition. If the assigned justice orders the release of the petitioner on bail pending final disposition of the petition pursuant to Rule 74(b) and the petitioner is admitted to bail, the sentence is automatically stayed. If the final judgment is adverse to the petitioner, the stay automatically terminates when the judgment making final disposition is entered in the criminal docket. When a stay of sentence of imprisonment is so terminated, the clerk of the Superior Court shall forthwith mail a date-stamped copy of the judgment making final disposition to the parties and to the sheriff named in the underlying commitment order. Within 3 days after that mailing, excluding Saturdays, Sundays and legal holidays, the petitioner's counsel or, if not represented by counsel, the petitioner shall contact the office of the sheriff named in the underlying commitment order and make arrangements satisfactory to the sheriff for surrendering into that sheriff's custody that day or, at the direction of the sheriff, the next regular business day. If such arrangements are not timely made, or if the arrangements are not complied with, upon the request of the named sheriff or the attorney for the respondent, or by direction of the assigned justice, the clerk of the Superior Court shall issue a warrant for the petitioner's arrest. Upon issuance of that warrant and necessary notice by the clerk to the assigned justice of that fact, the assigned justice, in conformity with Rule 46(f)(1), shall declare a forfeiture of the Rule 74 bail because of the breach of condition.

(b) Bail Pending Appeal. If the assigned justice orders the release of the petitioner on bail pending appeal pursuant to Rule 75(b) and the petitioner is admitted to bail, execution of the sentence shall be stayed as provided in Rule 38(a) and (b). The procedure for the petitioner's surrender following automatic termination of a stay of sentence of imprisonment is as provided in subdivision (a).

RULES 76 AND 77. [ABROGATED]

RULE 78. [ABROGATED]

RULES 79 TO 84. [RESERVED]

XI. EXTRADITION PROCEEDINGS

RULE 85. NATURE OF THE PROCEEDINGS

A petition contesting extradition pursuant to 15 M.R.S.A. § 210 shall be docketed by the clerk on the criminal docket of the District Court.

RULE 86. ASSIGNMENT OF COUNSEL

The determination of indigency, the appointment and compensation of counsel, and the continuing duty of counsel to represent petitioner shall be governed by the provisions of Rules 44, 44A and 44B.

RULE 87. DISCOVERY

Upon written request petitioner is entitled to receive copies of the Governor's warrant, the demand for extradition and all documents in support thereof. A party is not otherwise entitled to discovery except upon motion and a showing of good cause why such discovery should be allowed.

RULES 88 AND 89. [ABROGATED]

RULE 90. [ABROGATED]

XII. POSTCONVICTION MOTION FOR DNA ANALYSIS; NEW TRIAL HEARING

RULE 95. INITIATION OF PROCEEDINGS

(a) Person Entitled to Bring a Motion; Filing and Service. Any person who satisfies the prerequisites of 15 M.R.S.A. § 2137 may file a motion for DNA analysis as provided under 15 M.R.S.A. § 2138(1). Filing and serving must be in accordance with Rule 49.

(b) Docketing and Assignment on postconviction motion for DNA analysis pursuant to 15 M.R.S.A. ch 305-B shall be docketed by the clerk in the underlying criminal proceeding. The motion shall be assigned as provided under 15 M.R.S.A. § 2138(1).

RULE 96. ASSIGNMENT OF COUNSEL

(a) Compliance with 15 M.R.S.A. § 2138(3). Following the filing of a motion for DNA analysis, the court may appoint counsel any time during the proceeding.

(b) Determination of Indigency; Appointment and Compensation; Continuing Duty to Represent. The determination of indigency, the appointment of and compensation of counsel, and the continuing duty of counsel to represent the person shall be governed by the provisions of Rules 44, 44A and 44B.

RULE 97. INITIAL TRIAL COURT PROCEEDINGS

(a) Order Preserving Evidence. Following the filing of a motion for DNA analysis the court shall order the State to preserve evidence and prepare and submit an evidence inventory as provided under 15 M.R.S.A. § 2138(2).

(b) Court Findings; Order Directing Crime Lab to Perform DNA Analysis. Pursuant to 15 M.R.S.A. § 2138(5), the court shall state its findings of fact on the record or shall make written findings of fact supporting its decision to grant or deny a motion to order DNA analysis. If the court determines that the person has satisfied the burden of proof required under 15 M.R.S.A. § 2138(4), the court shall order the crime lab to perform DNA analysis on the identified evidence and on a DNA sample obtained from the person.

(c) Payment of Cost of DNA Analysis. In the case of an indigent person, the cost of the DNA analysis shall be paid by the crime lab. A nonindigent person or a person found by the court to have the financial means with which to bear a portion of the cost of the DNA analysis shall make satisfactory financial arrangements with the crime lab within 14 days of the filing of the court order directing the crime lab to perform DNA analysis. Determination of indigency shall be governed by Rule 44A.

RULE 98. DNA ANALYSIS RESULTS

(a) Compliance With 15 M.R.S.A. § 2138(8). The DNA analysis results shall be provided by the crime lab to the court, the person and the attorney for the State. Upon motion by the person or the attorney for the State, the court may order that copies of the analysis protocols, laboratory procedures, laboratory notes and other relevant records compiled by the crime lab be provided to the court, the person and the attorney for the State.

(b) Analysis Results Other Than That the Person Is Not the Source of the Evidence. If the results of the DNA analysis are inconclusive or show that the person is the source of the evidence, the court shall deny any motion for a new trial as provided under 15 M.R.S.A. § 2138(8)(A).

(c) Analysis Results Showing the Person Is Not the Source of the Evidence. If the results of the DNA analysis show that the person is not the source of the evidence, the court shall appoint counsel if the court finds that the person is indigent under Rule 96(b) and shall hold a hearing as provided under 15 M.R.S. § 2138(10).

(d) Request for Reanalysis by the Attorney for the State. If the analysis results show the person is not the source of the evidence, upon motion of the attorney for the state, the court shall order reanalysis of the evidence and shall stay the hearing pending the results of DNA analysis.

RULE 99. HEARING; COURT FINDINGS; NEW TRIAL GRANTED OR DENIED

At the conclusion of the hearing held as provided under 15 M.R.S. § 2138(10), the court shall state its findings of fact on the record or make written findings of fact supporting its decision to grant or deny the person a new trial as required under 15 M.R.S. § 2138(10).